

LAND USE MANAGEMENT

Land Use Regulation Program

Coastal Permit Program Rules

Coastal Zone Management Rules

Adopted Repeals: N.J.A.C. 7:7E-5 and 7:7E Appendix 1, Figure 14

Adopted New Rules: N.J.A.C. 7:7-9 and 7:7E-1.7, 3.49, 5, 5A and 5B, and 7E Appendices 2 and 3

Adopted amendments: N.J.A.C. 7:7-10 and 7:7E-1.1, 1.5, 2.2, 3.1, 3.17 through 3.25, 3.40, 6.1, 7.2, 7.3, 7.5, 7.10, 7.14, 8.7 and 8.11

Proposed: August 2, 1999 at 31 N.J.R. 2042(a).

Adopted: December 30, 1999 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: December 30, 1999

Authority: N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq., and 12:5-1 et seq.

DEP Docket Number: 16-99-07/702

Effective Date: On publication in the New Jersey Register

Expiration Date: Coastal Permit Program Rules, June 24, 2000

Coastal Zone Management Rules, June 23, 2000

In 1993, the Legislature amended the Coastal Area Facility Review Act (CAFRA) to alter the Department's regulatory jurisdiction over certain types of coastal development. The statutory amendments also directed that the adoption of new rules and regulations be closely coordinated with the provisions of the State Development and Redevelopment Plan adopted pursuant to P.L. 1985, c.398 and the federal Coastal Zone Management Act, 16, U.S.C. 1451 et seq.

In February 1994, the Department published a notice of Public Meetings and Opportunity for Public Comment in the New Jersey Register (see 26 N.J.R. 1003(a); February 22, 1994), to engage the public in a discussion of the concept of establishing impervious cover limits for CAFRA development project sites based on the location of the sites in Planning Areas and/or centers. On December 1, 1997, the Department published notice of the release of the text of draft subchapter 5 rules regarding impervious cover and vegetative cover requirements applicable in the CAFRA area (see 29 N.J.R. 5041(a)). The Department received comments on the draft rules from county planning departments, municipalities, environmental and builders' groups, and citizens.

On December 7, 1998, the Department proposed new rules and amendments to the Coastal Permit Program rules and Coastal Zone Management rules in the New Jersey Register (see 30 N.J.R. 4167(a)). That proposal established a new approach to determining impervious cover limits and vegetative cover percentages for sites in the CAFRA area, and updated the existing standards for sites located in the Upland Waterfront Development Area. The proposal also contained amendments to the Coastal Permit Program rules to enable the relaxation of the substantive standards of the Coastal Zone Management rules in cases of an extraordinary hardship. The Department held four formal public hearings on the December 1998 proposal and during the extended public comment period, held additional meetings with the building community and environmental groups to share information about the proposal. The Department also met with every county planning office in the CAFRA area and with representatives from many municipalities in the CAFRA area. The Department determined not to adopt the rules as

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proposed on December 7, 1998, in order to modify them in response to concerns and issues raised during the public comment period.

On August 2, 1999, the Department repropoed the amendments and new rules that had been the subject of the December 1998 proposal, and also proposed a new Special Area rule for Atlantic City at N.J.A.C. 7:7E-3.49 as well as a new Sector Permit rule at N.J.A.C. 7:7-9. The rules adopted herein reflect the extensive public input and participation in this rulemaking process since 1994.

In response to public comment on the August 2, 1999 proposal, the Department has made a number of changes on adoption. These changes are described below in responses to comments and in the Summary of agency-initiated changes.

The Department is also publishing elsewhere in this Register, a proposal of amendments to the rules adopted herein (see ** N.J.R. ****). This concurrent proposal responds to issues raised on the August 2, 1999 proposal that require further public notice and comment. Briefly, the concurrent proposal includes new and modified coastal centers and descriptions of the Coastal Planning Areas; includes a recertification procedure for Sector Permit municipalities; and broadens the scope of the Sector Permit.

Summary of Hearing Officer's Recommendation and Agency Response:

The Department held six public hearings on the proposed repeals, amendments and new rules. The hearings were held on the following dates and locations: August 23, 1999, New Jersey Department of Environmental Protection headquarters building in Trenton; August 26, 1999 Borough Hall, Avalon; August 30, 1999, Ocean County Administration Building, Toms River, New Jersey; September 2, 1999, City Hall, City of Long Branch; September 7, 1999, City Hall, Atlantic City; and September 8, 1999, Old Court House, Salem. The hearing officer for all hearings, Raymond Cantor, Assistant Commissioner for Land Use Management and Compliance, recommended that the Department adopt the rules with the changes described in the responses to comments below and Summary of Agency-Initiated Changes. The hearing record is available for inspection in accordance with applicable law by contacting Janis Hoagland, Esq., Office of Legal Affairs, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

The Department accepted comments on the August 2, 1999 proposal through October 1, 1999. The following persons timely submitted written comments and/or made oral comments at one of the public hearings.

1. James Alberta
2. Bud Aldrich, Dover Township
3. Jim Alexis, Middle Township
4. Gus Andy

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5. Candace Ashmun
6. Alan Avery, Ocean County Planning Board
7. Richard Baehrle, Atlantic County Mainland Chamber of Commerce
8. Dwayne Bailey
9. Patrick Benn
10. D.W. Bennett, American Littoral Society
11. William Bezaire, Cape May City Planning Board
12. Marvin Blethen, WHIBCO, Inc.
13. Carl Block, New Jersey State League of Municipalities
14. Barbara Boeshe, Cape May County Planning Board
15. Meredith Brennan, Shark River Environmental Round Table, Borough of Belmar Environmental Commission
16. Arthur Brown, N.J. Department of Agriculture
17. Peter Buchsbaum, Greenbaum, Rowe, Smith, Ravin, Davis & Himmel
18. Michelle Byers, New Jersey Conservation Foundation
19. Brian Carlin
20. Elizabeth Carlin
21. Christopher Connors, New Jersey State Assemblyman, 9th District Legislative Office
22. Leonard T. Connors, New Jersey State Senator, 9th District Legislative Office
23. Phil Correll
24. Ralph Coscia, Citizens Right to Access Beaches
25. Dennis Coughlin
26. A. Brook Crossan, Potomac-Hudson Engineering Inc.

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27. Marie Curtis, New Jersey Environmental Lobby
28. Sam Deneka
29. Michelle Dillon
30. Anthony DiLodovico, Schoor DePalma
31. Ed Dlugosz
32. Sally Dudley, Association of New Jersey Environmental Commissions
33. Dennis Duffy, Duffy-Dolcy & McManus
34. Loretta Dunne
35. Henry Egerton, E.A.G.L.E
36. Gordon Engel
37. Jay Fiedler, City of Atlantic City, Division of Planning
38. John Flemming
39. Stephen Fink
40. Tom Foley
41. Christopher Forino
42. Dale M. Foster, Cape May County Engineer
43. Malcolm Fraser, Mayor, Borough of Cape May Point
44. Robert Furlong, Long Branch Tomorrow
45. Joseph Fusco, Trump Hotels & Casino Resorts
46. Jane Horton Galetto, Citizens United
47. Robert Giles, Borough of Seaside Heights
48. Redenia Gilliam-Mosee, Bally's Park Place

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49. Amy Goldsmith, New Jersey Environmental Federation
50. Penelope Griber, D.W. Smith Associates
51. Michael Gross, Giordano, Halleran & Ciesla
52. Elizabeth Hanratty, American Littoral Society
53. William Harrison, Pinelands Commission
54. P. Kenneth Hershey, Borough of Seaside Heights
55. John Hess, Birdsall Engineering, Inc.
56. William Heyer
57. Richard Hluchan, Ballard, Spahr, Andrews & Ingersoll
58. Robert Jaggard, Borough of Avalon Planning Board
59. Irene Jameson, North End Neighborhood Association
60. Dorothy Jedd
61. Ray Kalainkas
62. Stephen Kehs, County of Cumberland, Department of Planning and Development
63. John Kelley, Galloway Township
64. Paul Kelley, Remington & Vernick Engineers
65. Joseph Kelly, Greater Atlantic City Chamber of Commerce
66. Jim Kilsdonk
67. Don Kirchhoffer, New Jersey Conservation Foundation
68. Deborah Kliman
69. Harvey Kliman
70. Don Kohler

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71. Chuck Kralovich, Sierra Club
72. Barbara Lawrence, New Jersey Future
73. William Layton, New Jersey Concrete & Aggregate Association
74. Marilyn Lennon, Paulus, Sokolowski & Sartor, Inc.
75. Ted Light, Midway Beach Condominium Association
76. Andre Lippi
77. Michael Luchkiw, Decotis, Fitzpatrick & Gluck
78. Linda Mack, Monmouth County Audubon Society
79. John Maczuga, Bay Pointe Engineering
80. Ron Magill
81. Edward Mahaney, City of Cape May
82. Joseph Maher, Atlantic County Department of Regional Planning and Development
83. John Mallon, Ernst, Ernst, & Lissenden
84. Linda McDonough
85. Michael McGuinness, National Association of Industrial and Office Properties
86. Jeffrey W. Moran, New Jersey State Assemblyman, 9th District Legislative Office
87. Bill Neil, New Jersey Audubon Society
88. Russell Oakes
89. Patrick O'Keefe, New Jersey Builders Association
90. Audrey Oswell, Caesars Atlantic City
91. Bob Owen
92. Martin Paliughi, Mayor, Borough of Avalon

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93. Gloria Pierce, Monmouth County Friends of Clear Water
94. Francis Ponti
95. David Pringle, New Jersey Environmental Federation
96. Michael Reeves, Salem County Planning Board
97. Robert Reid, Dixon Associates
98. Joseph Rettagliata, Monmouth County Planning Board
99. David Roberts, Schoor DePalma
100. Kenneth Rosevear, MGM Grand Development, Inc., MGM Grand Atlantic City
101. Mark Sandson, Hankin, Sandson, Sandman, Bradley & Palladino
102. Fred Schmidt
103. Pearl Schwartz
104. Jim Smith, Cape May County Planning Department
105. Ken Smith, Coastal Advocate
106. Elaine Steele, Galloway Township
107. Richard Stokes, Insurance Council of New Jersey
108. Caren Sturges
109. John Sudia, Monmouth Ocean Development Council
110. Clay Sutton
111. Wayne Thomas, Township of Eagleswood
112. Jeff Tittel, New Jersey Sierra Club
113. Herman Tolz
114. James Truncer, Monmouth County Board of Recreation Commissioners

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115. Martin Truscott, Bay Pointe Engineering

116. John Turner, III

117. Louise Usechak

118. James Whelan, Mayor, City of Atlantic City

119. Bill Wolfe, Sierra Club (New Jersey Chapter)

In addition to the comments from the above-listed individuals, the Department received seven letters submitted after the close of the comment period. Since these comments were submitted after the close of the comment period, the Department has not summarized them below, or listed the names of the senders above. The Department has reviewed these comments and taken them into consideration, however.

The timely submitted comments and the Department's responses are summarized below. The numbers in parentheses after each comment identify the respective commenter(s) listed above.

General

1. COMMENT: The Department's proposal has not adequately considered the impact of natural disasters on the CAFRA area. (107)

RESPONSE: The adopted rules do not alter the Department's regulatory jurisdiction under CAFRA or exempt any new development from compliance with the Coastal Zone Management rules. The Coastal Zone Management rules include, for example, the coastal high hazard area rule and erosion hazard area rule, which contain standards intended to prevent or minimize threats to public health and safety from natural disasters. Further, while newly adopted N.J.A.C. 7:7E-3.49 does allow casino/hotel development on the five existing ocean piers in Atlantic City, the rule also requires certain approvals in order to address potential impacts of natural disasters, including an approved emergency evacuation plan from the Atlantic City Office of Emergency Management and a flood damage prevention ordinance waiver from the Federal Emergency Management Agency.

2. COMMENT: Given the undertaking the Department was charged with, the Department staff have been very cooperative in working with the public on issues surrounding this proposal. (2)

3. COMMENT: The emphasis of this proposal, regulating larger developments differently and thus affording better protection of the overall development of the coast, makes sense. (75)

RESPONSE TO COMMENTS 2 AND 3: The Department acknowledges these comments in support of the rule.

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4. COMMENT: This proposal to control development is already too little and too late. (93)

RESPONSE: These rules were repropose in August 1999, after extensive outreach to and input from many interested parties, through public hearings and public meetings, and through meetings with County Planning Boards and municipal officials. The numerous comments received on the December 1998 proposal, which was superceded by the 1999 proposal, also were taken into consideration. The adopted rules are intended to direct development to coastal areas that are currently more developed, and therefore less sensitive to adverse environmental impact, while limiting development in the more environmentally sensitive coastal areas. This strategy will help to promote water quality, preserve open space and facilitate redevelopment of existing developed areas throughout the coastal zone. It is expected that the coastal rules will be amended in the future to reflect additional planning initiatives at the local, county and state level.

5. COMMENT: The overdevelopment of the coastal area is having an adverse impact on the State's tourism industry. (103)

RESPONSE: The intent of CAFRA and these adopted rules is to address current and future coastal development so as to channel development into areas with existing development and infrastructure while preserving the more environmentally sensitive areas. The rules should therefore help protect special coastal areas, thereby helping the State's tourism industry.

6. COMMENT: The commenter supports the Department's efforts to strengthen the CAFRA regulations. The provisions adding some required and voluntary regional planning to the existing site specific regulations are significant steps in the right direction. (67)

RESPONSE: The Department acknowledges this comment in support of the rule.

7. COMMENT: It should not be a matter of development and redevelopment plans, it should simply be a matter of elucidating rights with regard to land and then using the mechanism of zoning to secure those rights. (61)

RESPONSE: Municipal zoning will address land use and development at the local level. However, CAFRA was enacted in an effort to provide coordinated land use regulation of certain types of coastal development at the state level. The goal of CAFRA, and the implementing Coastal Zone Management rules, is to balance competing interests in the use of coastal resources for the benefit of all New Jersey residents and visitors, not only for the benefit of those who reside at the shore. Therefore, it is appropriate that the Department's Coastal Zone Management rules include standards for siting, design and construction of coastal developments in order to preserve the broader state interests in those resources.

8. COMMENT: The cumulative effect of development does not seem to be addressed by CAFRA. (6)

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RESPONSE: The cumulative impact of development in the CAFRA area is a significant concern of the Department. The Coastal Zone Management rules, and the adopted new rules and amendments, provide standards that address current and future development trends throughout the coastal area, and the potential adverse environmental impacts of this developments pursuant to a comprehensive environmental strategy. The primary focus of the adopted rules is the incorporation of “smart growth” principles into the CAFRA regulatory process, which should result in more coordinated land use decisions between local, county and state authorities. The ultimate goal is to concentrate development in areas where existing development and infrastructure can adequately accommodate future growth, while preserving more environmentally sensitive areas and open spaces. With these amendments and new rules, the cumulative impacts of coastal development will be addressed in a more comprehensive and coordinated fashion under CAFRA.

9. COMMENT: There is much double talk about the repropoed CAFRA rules. The manner in which the rules are presented makes them incomprehensible. It looks as though the Department is deliberately confusing the issue and is pushing through the December 1998 rules with minor adjustments. The rules should be presented without the fuzzy cross-referencing. (28)

10. COMMENT: The regulations are needlessly complex. It is extraordinarily difficult for the producers of concrete and its constituent components to determine where plants can be located in the regulated area. (73)

RESPONSE TO COMMENTS 9 AND 10: The proposal was prepared and published in accordance with the Administrative Procedure Act (APA) and with the Rules for Agency Rulemaking (N.J.A.C. 1:30). Since the proposal included a new concept for determining impervious coverage limits for proposed development sites, the scope and content of the proposal may have seemed confusing to those familiar with the prior rules. However, the proposal included a section by section summary to explain specific rule changes and the basis for the changes. Cross-referencing throughout the proposal document was necessary to ensure that the rule language was concise and to avoid repetition in text.

11. COMMENT: The Department is commended for meeting with the county and the involved municipalities and actively addressing their concerns prior to issuing the August 2, 1999 proposal. (114)

RESPONSE: The Department acknowledges this comment in support of the rule.

12. COMMENT: The August 2, 1999 proposal is the weakest of the three versions and will directly affect those residing in Monmouth County. Monmouth County is struggling with uncontrolled development and there appears to be no end in sight. Those in the Legislature who should be fighting to protect our remaining resources have failed, in particular Governor Whitman. (78)

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13. COMMENT: The regulations need to be strengthened to protect the Shark River area from degradation. The regulations need to take into consideration the protection of watersheds and the quality of life. (15)

RESPONSE TO COMMENTS 12 AND 13: The adopted rules are intended to balance the goals of resource protection and sound coastal development. Due to the existing level of development in Monmouth County, and its classification as a Coastal Metropolitan Planning Area, the acceptable impervious coverage limits will be somewhat higher in that County than in other less developed areas. However, the construction standards and best management practices required by the Coastal Zone Management rules will continue to protect coastal resources and to promote water quality throughout Monmouth County, including within the Shark River watershed. The protection of New Jersey's coastal resources and the preservation of environmentally sensitive areas, forest vegetation and open space will enhance the quality of life for coastal residents and visitors alike.

14. COMMENT: The coastal rules must be rewritten to adequately protect the coast. This proposal should not be adopted, and a revised rule should be developed in consultation with coastal reform groups. In addition, the CAFRA loophole should be closed. (29, 34, 78, 110)

15. COMMENT: It is clear that this third version of the regulations has been weakened by the extreme pressures placed on the Department by the builders and developers. They must be strengthened to prevent overdevelopment of the Delaware Bay shore. (67)

16. COMMENT: The August 2, 1999 proposal is the weakest of three versions and will lead to the suburbanization of what is left of the coastal interior and will pour higher densities into already overcrowded regions. This will result in more fragmented habitat, more hours in traffic jams and higher costs to taxpayers, who have to pay for the sewer lines and desalinization plants driven by the developers' obsessive dreams. (87, 110)

17. COMMENT: The Department should withdraw this proposal and repropose something that is more in keeping with the 1993 Legislation. (27)

18. COMMENT: The rules should be looked at again and rewritten. (31)

19. COMMENT: New Jersey's coastal resources, citizens, and visitors deserve much better. The CAFRA loophole needs to be closed by the Legislature for any rule to be truly effective. (87)

20. COMMENT: This rule should be pulled and reproposed. (112)

21. COMMENT: Atlantic County is strongly opposed to these regulations and requests that they be withdrawn. (82)

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22. COMMENT: The commenters oppose the adoption of the proposed rules. The rules should be scrapped and new more strict rules adopted to protect the Cape May peninsula. The rules have too many centers, do not adequately protect rural and environmentally sensitive areas and do not adequately protect our endangered aquifers. The Department and Governor should cooperate in developing rules, which substantially protect our limited and endangered environmental resources. (68, 69)

23. COMMENT: This proposal is a bad plan which will lead to the suburbanization of the remaining coastal interior, more fragmented wildlife habitat and increased costs to taxpayers who will have pay for the development infrastructure. The commenter encourages the Department to work with the coastal reform groups to revise the CAFRA rule into something that does much more to protect the fragile and valuable rural and environmentally sensitive areas near the coast, and additionally plug the loophole that allows residential builders to evade even the good regulations that exist. (39)

24. COMMENT: The proposed CAFRA rules need to be reviewed and revised to promote planned growth in a meaningful manner. (12)

25. COMMENT: Under this proposal, Ocean County's population can more than double. If these rules go forward, by the year 2020, Ocean County could be the most populated County in New Jersey, even surpassing Bergen County. What is disturbing about this scenario is that this proposal is supposed to manage growth, not just limit its impacts on water quality and sewers. (112)

26. COMMENT: The commenter supports growth management and a rule that would follow the intent of the legislature, of the public committee and the Governor's vision, which is the spirit of the State Plan, to redevelop the developed areas of New Jersey and protect the environmentally sensitive areas. However, this rule fails to accomplish these tasks. (95)

RESPONSE TO COMMENTS 14 THROUGH 26: As noted in the response to comment 4, this rule was developed with significant public input after publication of the initial proposal in December 1998. The goal of this rule is to limit development "sprawl" into environmentally sensitive areas, thereby maintaining open space and wildlife habitat throughout the coastal area. This goal remains unchanged from the December 1998 rule proposal. It should also be noted that this rule does not alter the Department's jurisdiction under CAFRA by lowering the regulatory threshold or by "closing the CAFRA loophole." Jurisdiction can only be modified by the Legislature.

27. COMMENT: The rules are weak and not adequate to protect the shore, specifically the major bird flyway, butterflies, and critical aquifers. The rules need to be strengthened, to protect these areas and permit less building and pavement. (108)

28. COMMENT: This proposal would accelerate the degradation of the quality of life of the New Jersey Shore. The Jersey Shore should not become a developers' paradise. It is a paradise

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for people who live here year around and is a paradise for people who come here to visit. The rules do not address issues such as water quality and quantity and traffic and do not adequately control development. (49)

RESPONSE TO COMMENTS 27 AND 28: The adopted rules are intended to preserve environmentally sensitive coastal resources while directing development to less sensitive areas within the CAFRA zone. As the Department attempts to strike this balance, certain interests are likely to view the rules as either too weak or too restrictive. However, the rules do reflect the varying sensitivities of the CAFRA area through different center designations and allowable impervious cover limits. In particular, the more environmentally sensitive areas such as the Cape May peninsula have correspondingly lower impervious cover limits, as compared to the more densely developed areas of Monmouth County and northern Ocean County. It should also be noted that the Special Area rules at N.J.A.C. 7:7E-3 and the Resource rules at N.J.A.C. 7:7E-8 apply to all CAFRA-regulated development, and therefore, will continue to protect water quality, wildlife habitat, forest areas and other coastal resources.

29. COMMENT: CAFRA needs to be strengthened to include residential housing and small business to prevent sprawl from consuming the coastal areas of New Jersey. The law allows those who have money to afford housing tracts in environmentally sensitive areas, resulting in a decrease in water quality and air quality for those who lived there, or along the routes to the coast, for years. Reduce the amount of growth that is allowed along the New Jersey coast. (71)

30. COMMENT: As New Jersey is the most densely populated state in the union it is imperative that a government body ensure that development does not overwhelm the natural environment. Growth must be regulated so that it does not create several other problems for power, natural resources and crowding. It is one sided to only consider short-term benefits to the economy. (1)

31. COMMENT: This proposal is a formula for urbanization of the whole coast. How are we going to evacuate those areas in the event of a hurricane? Who is going to pay for schools and the widening of the roads? (112)

RESPONSE TO COMMENTS 29 THROUGH 31: CAFRA, as amended in 1993, provides the Department with the authority to regulate residential housing and small businesses. The regulatory thresholds are established in the law, depending on the location of these proposed developments in relation to the tidal waters, beaches and dunes. The adopted rules are intended to further refine and implement the requirements of CAFRA, through a more coordinated planning effort, including state, county and municipal entities. The intention is to limit future growth in the more environmentally sensitive areas and to redirect future growth to the more densely developed areas where existing infrastructure can support such development. Therefore, this rule will not lead to the urbanization of the whole coast.

32. COMMENT: The proposed rules will be unclear and restrict appropriate regional economic growth. There will be additional costs for municipalities and the permit process will be more complex, not simpler. (65)

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RESPONSE: The adopted rules are not intended to restrict growth but to redirect future growth to those coastal areas that can accommodate it. This approach will help preserve the more sensitive coastal resources, including farmland, and promote improved water quality throughout the CAFRA area. The rules also should simplify the permitting process by providing more clearly defined standards for allowable impervious cover limits. In addition, the Sector Permit at N.J.A.C. 7:7-9 should further simplify the permitting process for certain developments within defined sectors.

33. COMMENT: Quotas are needed for establishing restrictions on minimum amounts of land a house can be built on. These minimums need to increase over time. (1)

RESPONSE: The rule establishes impervious cover limits for most development, thus in essence setting a minimum amount of land required for a given size development based on its location. It is expected that the coastal rules will be amended in the future to reflect additional planning initiatives at the local, county and state level.

34.COMMENT: The proposed amendments will impose a greater hardship on property owners in all communities subject to CAFRA without providing any financial remuneration to the affected property owners, and would severely curtail local opportunities for economic growth and employment. (97,106)

RESPONSE: Certain types of development are required to obtain CAFRA approval, as mandated by statute. The Department agrees that those subject to regulation by CAFRA are affected more than those outside of the CAFRA area. However, the rules will further the goals of CAFRA, by balancing the need for continued development and employment with the need for resource protection. In addition, the process for relaxing the substantive standards to avoid an extraordinary hardship at N.J.A.C. 7:7-1.10 will address issues related to “takings” and compensation to property owners in such cases. The rules will not impose greater hardship on all communities because they are intended to, among other things, lessen future infrastructure costs associated with sprawl and water resources and the rule should encourage development and redevelopment in centers.

35. COMMENT: The commenter supports SCR 96 which finds that the draft regulations of the Department implementing the 1993 amendments to the CAFRA are inconsistent with the intent of the Legislature, and thus these regulations should be withdrawn immediately. (106)

36. COMMENT: The commenter strongly supports SCR 96, and as such the proposed regulations should be withdrawn immediately. (97)

RESPONSE TO COMMENTS 35 AND 36: The Department disagrees that the proposed regulations are inconsistent with CAFRA. The 1993 CAFRA amendments provided that the Department’s rules must be closely coordinated with the provisions of the State Development and Redevelopment Plan (See N.J.S.A. 13:19-17(b)). In 1993, the State Planning Act was also

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amended to provide that the State Planning Commission might incorporate the Department's coastal planning policies as part of the State Plan. The adopted rules reflect that direction from the Legislature and are consistent with the goals of CAFRA to protect valuable coastal resources, as set forth in N.J.S.A. 13:19-2, 13:19-10 and 13:19-11.

37. COMMENT: State municipal land use statutes are sufficient to control development within a city's boundaries. The proposed regulations are not warranted and should be abandoned completely. (25)

RESPONSE: The Department disagrees. CAFRA was initially enacted in 1973 in response to insufficient protection of the state's coastal resources and the recognition that local regulation alone was insufficient to protect these resources. This finding was confirmed again in 1993 when the CAFRA statute was amended to increase the Department's regulatory jurisdiction within the CAFRA zone, particularly in areas close to the waterfront and beaches and dunes. Oversight of coastal development at the state level was determined by the Legislature to be necessary to ensure coordinated growth and resource protection throughout the CAFRA zone.

38. COMMENT: Inadequate control of development at the local and county level led to passage of the Pinelands and CAFRA laws. CAFRA has not achieved the objectives of protecting ecologically sensitive areas from development, and action is needed now to protect the remaining natural resources of the coast from individual and cumulative impacts. (87)

39. COMMENT: The commenter finds it interesting that Galloway Township believes land use decisions should be left to the local government, when it required a lawsuit by environmental groups to control development there. Local governments have been unable to control development and therefore state control is necessary. (10)

RESPONSE TO COMMENTS 38 AND 39: CAFRA has been successful in controlling impacts of development throughout the coastal area. However, the Department believes that these adopted rules will further the Department's efforts in achieving the objectives of CAFRA since these rules reflect a more coordinated planning effort between state, county and municipal agencies. This coordinated planning represents a new initiative in coastal zone management, one which should result in greater preservation of environmentally sensitive coastal resources, forest areas and open space.

40. COMMENT: The rules fail to stimulate brownfield redevelopment which can only intensify the development pressures on greenfield sites in the CAFRA zone. This is contrary to the intent of the regulations to steer development away from greenfields. (17)

RESPONSE: The regulations encourage development and redevelopment in Coastal centers, CAFRA centers and Metropolitan Planning Areas where many brownfields are located. In addition, the rules allow impervious cover limits based on center or planning area type to be exceeded if the existing, legal impervious cover exceeds those limits or if necessary to properly remediate a contaminated site under the Department's site remediation rules. This reflects the

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fact that in some cases, portions of contaminated sites must have impervious covers to contain the contamination. Such a provision for site remediation was not previously included in the rules. Therefore, the rules should facilitate brownfield redevelopment.

41. COMMENT: The amendments proposed on August 2, 1999 do not comply with the 1993 CAFRA amendments. The proposal is procedurally inconsistent with this legislative mandate since the Department has failed to comply with the one year deadline for rulemaking. (119)

RESPONSE: Due to the scope of the changes that were contemplated, the attempt to build consensus for the new planning process, and the extensive outreach efforts of the Department, these rules governing development intensity based on location in centers versus environs could not be adopted within one year of the amendment of the CAFRA statute. However, amendments to the Coastal Permit Program rules, N.J.A.C. 7:7, and the Coastal Zone Management rules, N.J.A.C. 7:7E which implemented the 1993 legislative amendments to CAFRA were adopted within one year of July 1993 and the process to closely coordinate with the State Development and Redevelopment Plan has been ongoing since 1994.

42. COMMENT: These CAFRA rule amendments do not do enough to honor home rule and individual property rights. Closer coordination and communication between the municipalities and the Department is required for more effective and compatible regulations. (14)

43. COMMENT: The Department has not allowed municipalities an opportunity to participate in the development of these rule changes. There has been a complete lack of any substantive exchange of ideas with the Township of Galloway and City of Absecon. The commenters request that the rules be withdrawn immediately. (97, 106)

44. COMMENT: In several locations the summary of the proposal cites the outreach effort by the Department in the planning decisions reflected in the proposed rules. As the planning consultant for eight municipalities located within the coastal area, it has been the commenter's experience that the outreach effort, at least at the municipal level, was not that extensive. (79)

RESPONSE TO COMMENTS 42 THROUGH 44: The Department conducted an extensive outreach effort, including numerous meetings with representatives of municipalities in the CAFRA area, all municipalities in the CAFRA area that requested to meet with the Department, and meetings with every county planning office in the CAFRA area. The Department intends to continue to work with local governments. These regulations are not static, but as continued planning efforts occur, may be amended to reflect those efforts.

45. COMMENT: The amendments do not address the current basic inequities in the CAFRA regulations. For example, a large land owner in an area without municipal water and sewer may create 24 dwelling units without a CAFRA permit, while an owner of a small single lot with residential development on each side and available municipal water and sewer can be refused a CAFRA permit for a single dwelling simply because the property is within 150 feet of tidal

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water. This inequity can be further compounded if the small lot has been owned for many years and the owner has paid a considerable amount in taxes. (14)

RESPONSE: Jurisdiction under CAFRA was determined by the Legislature when the statute was amended in 1993. This jurisdiction cannot be changed through the rule-making process. However, the Department has established permits-by-rule and general permits for single family homes and duplexes which simplify the permit process for these smaller developments. The permit fees and administrative requirements associated with these types of permit applications were reduced to a maximum of \$250 in July 1994 as part of the rule amendments to implement the 1993 legislative amendments to CAFRA. The permit applications for the vast majority of single family homes and duplexes are, in fact, approved. In addition, the new rules contain a provision for the relaxation of the substantive standards to avoid extraordinary hardship.

46. COMMENT: While the proposal does attempt to address long standing requests which might further the revitalization of Atlantic City, both the direction of this regulatory package and the text of the regulations themselves do little to address long expressed concerns of Atlantic County for the adequate protection of coastal resources in a fair and comprehensive manner. (82)

RESPONSE: The Department believes the adopted rules will further CAFRA's mandate to develop compatible land uses in order to preserve the most ecologically sensitive and fragile areas from development by encouraging development in compact growth areas and limiting it in outlying and environmentally sensitive areas.

47. COMMENT: The proposed regulations will result in multiple standards and confusion for the public in areas where CAFRA and the State Planning Commission will have jurisdiction. (97)

RESPONSE: The State Planning Commission does not have regulatory jurisdiction over development. Therefore, there is no dual jurisdiction between the State Planning Commission and the Department. Further, the rules are intended to coordinate coastal permitting with the State Planning Commission planning policies.

48. COMMENT: The proposal does not address the impact on the responsibilities of the CAFRA communities to meet their affordable housing responsibilities. There is no relief provided under the proposal to meet COAH requirements. This oversight must be addressed. (30)

RESPONSE: CAFRA municipalities are responsible for meeting their affordable housing obligations, just as all other New Jersey municipalities are. This was the case before and after these amendments were proposed, and these obligations are not altered by this adoption. The Department expects that newly proposed affordable housing developments will continue to be approved under CAFRA, in accordance with the Coastal Zone Management rules, as they have been in the past. Nothing in these adopted rules should negatively impact the ability to construct

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one type of development (affordable housing) over another, nor unfairly prejudice applications for affordable housing projects. In fact, the rules may encourage, through the provisions for higher impervious cover limits in centers, the development of affordable housing in compact centers most appropriate for such housing because of the services and infrastructure in place there. Furthermore, the Department will continue to work with the Office of State Planning and the Department of Community Affairs to develop consistent, workable policies to facilitate the construction of affordable housing development.

49. COMMENT: The proposal is silent on the impact on projects that are in the planning stages. There is no protection from these significant changes beyond that for projects deemed complete for review by the Department. What about those projects that are under review by the municipality and have already invested significant resources, sometimes hundreds of thousands of dollars, in planning and engineering which will now not be eligible for a CAFRA permit as planned? The proposal must make allowance for such projects to go to completion as planned. The proposal should allow for all projects with preliminary approval to proceed pursuant to the existing rules as long as they apply for a CAFRA permit within one year. (30)

RESPONSE: The proposal did not include amendments to the so-called “time of decision” provision at NJAC 7:7-4.4(a)4. That rule provides that once an application is declared complete for final review in accordance with N.J.A.C. 7:7-4.6, the Coastal Zone Management rules in effect at that time will govern the staff review of the permit application. The preparation of the rules adopted herein involved extensive outreach, including meetings, public hearings and ample opportunity for public input. The process allowed time for the proposed amendments to be considered in the context of project development.

50. COMMENT: The commenter is concerned that there is no grandfather provision provided in this proposal. The absence of such a provision is inconsistent with the normal procedure that is followed for rule-making so as to provide fairness, equity and predictability. (85)

51. COMMENT: The proposed regulations fail to provide a “grandfathering” provision for pending applications. For example, as currently proposed, a CAFRA permit applicant whose application is under review at the time of the rule adoption may be faced with addressing new or altered regulatory provisions not in effect when their application was filed. This could prejudice such an applicant and delay review. Therefore the commenter suggests adding the following language to N.J.A.C. 7:7-1.4 and N.J.A.C. 7:7-2.1: “An application shall be reviewed in accordance with the regulations in effect at the time the application is filed with the Department. (77)

RESPONSE TO COMMENTS 50 AND 51: The Coastal Permit Program rules, N.J.A.C. 7:7-4.4(a)4, provide that proposed projects for which a CAFRA permit application has been submitted to the Department and been found complete for final review will be reviewed under the rules in effect at the time the application is declared complete for final review. This ensures continuity for projects that have been in the CAFRA review process for some time. Further, as previously stated, the rules adopted herein have been the subject of public comment since

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December 1998. Therefore, there was an ongoing opportunity for applications to be submitted and “grandfathered.”

52. COMMENT: In general, the rules are even more cumbersome and complex, and require considerable time and expense to deal with. (85)

RESPONSE: The Department disagrees. The amendments to the Coastal Zone Management rules contain defined acceptability standards which will make the rules easier to understand and apply to specific permit applications. In addition, the Department will continue to hold pre-application meetings with prospective applicants, at no cost, pursuant to NJAC 7:7-3. This process assists applicants in designing proposed projects and identifying issues of concern that should be addressed in their coastal permit application, further simplifying the permit application process. Further, the new Sector Permit will streamline the application process within approved sectors.

53. COMMENT: The commenter is concerned that the proposed regulations will make it needlessly difficult to site concrete plants in appropriate locations in the CAFRA area. Before the Department promulgates any further regulations for development in the coastal and waterfront areas, the Department should review them for their impact on the siting of the concrete plants which are indispensable to the anticipated development in the coastal area. (73)

RESPONSE: Concrete plants are specifically identified as “industrial developments” in the CAFRA statute and were subject to CAFRA review prior to the proposal of the rules adopted herein. These rules do not specifically address siting of concrete plants, but rather provide a new procedure for establishing impervious cover limits and vegetative cover requirements for them as CAFRA-regulated developments.

54. COMMENT: Were these proposed rules approved by the Governor? Does she even know what is happening with these rules and what was originally proposed in December 1998? Does she understand the issues this proposal raises? (92)

RESPONSE: The Department did provide the draft proposal to the Governor’s office before it was submitted for publication in the New Jersey Register.

55. COMMENT: Every decision that the Department makes under these proposed regulations should be subject to override or veto by the local government, since there is no one size fits all legislation that really works. (66)

56. COMMENT: The State Municipal Land Use Law is quite sufficient to control development along with municipal zoning and planning. The proposed regulations are completely overkill. (25)

RESPONSE TO COMMENTS 55 AND 56: The goals and responsibilities of the Department in regulating development in the CAFRA area are established by the CAFRA statute. When it

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enacted CAFRA, the Legislature found the manner in which the CAFRA area is developed is in the interest of all State residents. Therefore, state regulation is necessary in addition to local regulation. However, the Department developed these rules with the participation and input of many CAFRA area municipalities and the public. It will continue to work with municipal and county officials in an ongoing planning effort and will propose to amend the rules as appropriate for CAFRA purposes.

57. COMMENT: These regulations are misunderstood in that they apply for the most part, to development of greater than 25 units and not to individual single family homes. (43)

RESPONSE: The commenter is correct that the new Subchapters 5, 5A, and 5B related to impervious cover and vegetative cover requirements do not apply to construction of a single family home which is not part of a larger development. Thus the type of center or coastal planning area in which an individual single family home is located will not affect the CAFRA permitting decision for that home.

58. COMMENT: Property ownership is one of the sacred rights of every citizen in the State and Country and includes the right to sell property at a fair market value. The voters of this State in passing the recent ballot referendum for the purchase of open space did not vote for the State to rezone and take property. (7)

RESPONSE: The Department agrees that property ownership has a long and important history both in New Jersey and in the nation as a whole. However, not all diminutions in value of properties because of regulation are takings that must be compensated. As Justice Holmes observed in a well known “takings” case, “Government hardly could go on if, to some extent, values incident to property could not be diminished without paying for every such change in the general law” (Pennsylvania Coal Company v. Mahon, 260 U.S. 393, 413, (1922)). The Department does not believe that the adopted rules will result in a taking of private property, and disagrees with the suggestion that the rules are a means of acquiring open space without compensation. The main purpose of CAFRA and these rules is environmental protection, including steering development into areas that can accommodate it and away from environmentally inappropriate areas.

59. COMMENT: With regards to the preservation of open space, this proposal appears to be doing one of two things: (1) either all the money is going to be spent to preserve land in northern New Jersey, because the Department is going to regulate the land under CAFRA in southern New Jersey; or (2) the purpose of these regulations is to impose such stringent restrictions to drive the price of property down that the State can buy the property very cheaply. (57)

RESPONSE: Preservation of open space and concentration of development in appropriate areas has always been part of the goals of CAFRA and part of the Department’s environmental design strategy for the coastal area. The prior regulations placed restrictions on the amount of development that could occur on a specific site based on the region in which it was located, the physical conditions of the site, and the status of development off-site. The adopted rules replace

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that framework with one based on a planning effort coordinated with municipal and county governments. The rules are expected to redirect growth to coastal centers, CAFRA centers and the Coastal Metropolitan Planning Area, not to eliminate it. Under this rule, there are 108 CAFRA and coastal centers. Such growth management will reduce development sprawl and help preserve environmentally sensitive areas and open space, thereby maintaining and enhancing property values.

60. COMMENT: Page after page of the proposed regulations contain standards, rules and regulations that serve no other purposes than to put un-elected, unseen, untouchable bureaucrats in absolute control over what people may do with their own property. (40)

RESPONSE: The rules were proposed and adopted to respond to 1993 legislative amendments to the CAFRA statute calling for coordination between these rules and the State Development and Redevelopment Plan. They are intended to further CAFRA's mandate to develop compatible land uses in order to preserve the most ecologically sensitive and fragile areas from development within a comprehensive environmental design strategy, by encouraging development in compact growth areas and limiting it in outlying and environmentally sensitive areas.

61. COMMENT: After considerable effort translating the document's bureaucratese, it shows that the Department proposes to wrest virtually total control from municipal and county planning experts, citizen participants and elected officials, reducing local planning officials to little more than compliance officers producing ream after ream of paperwork to demonstrate that they have followed, are now following and will always follow Trenton's dictates to the letter. County and local planning experts, as well as citizens, must have a say in these matters. (40)

RESPONSE: The new rules and amendments are intended to promote the Department's ongoing efforts to build partnerships with coastal municipal and county governments in the formulation of coastal planning and development decisions. The coastal center boundaries were delineated in close consultation with county and municipal officials. The rules do not extinguish the role of local government in development approvals. As noted in previous responses, the new rules and amendments are in response to the 1993 Legislative amendments to CAFRA which called for coordination with the State Plan.

62. COMMENT: CAFRA in its existing form and CAFRA in the proposed form is bad for the environment, bad for the economy and, generally speaking, bad for everyone. (82)

63. COMMENT: The commenter is opposed to both the regulations and the process by which they are being developed and implemented. The technical standards are deeply flawed and will adversely affect our environment, economic viability and quality of life. (63)

RESPONSE TO COMMENTS 62 AND 63: CAFRA was enacted in 1973 as the Legislature's response to concerns regarding excessive development impacts on the coastal area. The statute was amended in 1993 to further regulate new development, particularly in areas proximate to

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beaches, dunes, and tidal waters and to provide for coordination between the CAFRA rules and State Development and Redevelopment Plan. The Coastal Zone Management rules, which have been in place since 1978, are the standards for decision making under CAFRA. The CAFRA statute and Coastal Zone Management rules have been effective in balancing the competing interests for the use of the coastal resources and in making the coastal area attractive for residents, businesses, and tourist. The new rules and amendments adopted herein are intended to further those goals.

64. COMMENT: The Department has denied the reasonable opportunity to meaningfully review and submit data, views and information with regard to the rule proposal. The Department should not have maintained its previously announced deadline for the public comment period. Through maintenance of this schedule, there is a denial of the opportunity to prepare meaningful comments on the proposed rules. Furthermore, the commenter's requests that the Department produce all Department files containing all documents that served as the technical basis and rationale for the substantive provisions of the proposed coastal permit program rules was not responded to. The Department also improperly communicated ex parte with individuals other than the commenter during the public comment period. (89)

RESPONSE: The Department believes that the comment period of 60 days for the August 2, 1999 proposal was sufficient and did provide adequate opportunity to prepare meaningful comments. During the comment period the Department held six public hearings in the CAFRA area, placed an unofficial version of the rule proposal on the Department's website several weeks before publication in the New Jersey Register, enabled the submittal of comments electronically via the website, and received written comments. Thus the Department exceeded the applicable rule making requirements contained in the Administrative Procedures Act. The Department received approximately 593 comments during the public comment period; these were in addition to those received on the December 1998 proposal which the August 1999 reproposal superceded. The subject matter of this rule making has been a matter of public notice and information for a number of years in as much as the August 1999 reproposal followed a notice of interested party review in February 1994, a pre-proposal in December 1997, and an initial proposal in December 1998 that was not adopted.

Furthermore, the CAFRA centers and Coastal Planning Area boundaries adopted as part of this rule were established by the State Planning Commission pursuant to its extensive public process.

In order to keep stakeholders informed, the Department met with various persons and organizations to discuss this rule making. The Department held numerous meetings before the reproposal was published in August 1999; some of these meetings included representatives of the New Jersey Builders Association. Several meetings also were held with various stakeholders during the comment period. The Department instructed all persons to submit official comments so that the Department could respond appropriately to any suggested rule changes in this published notice of adoption.

The Department disagrees with the commenter's claim that the Department's response to its document request deprived it of the ability to submit meaningful comments on the proposal. The commenter's initial requests were made while the December 1998 rule proposal, which was

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not adopted, was still pending. Subsequently, the Department responded to a new request by providing the commenter with lists of documents, some of which were used in formulating the rule, which the commenter could review. The Department also, as a courtesy, invited the commenter to visit the reference library of the Office of State Plan Coordination within the Department to review some of these documents.

65. COMMENT: Agricultural operations should be exempt from subchapters 5, 5A and 5B. Historically, the CAFRA rules do not apply to agriculture unless there is a commercial development such as a retail market with 50 or more parking spaces. Since the repropose rules do not change the criteria for the subset of development regulated, agriculture should be given the same consideration that currently exists. Following that rationale, the “New Jersey Aquaculture Development Act” states that aquaculture shall be considered a component of agriculture in the State and aquacultured plants and animals shall be considered to be agriculture crops and animals. Therefore, the exemption requested for agriculture should apply to aquaculture as well. The CAFRA rules continue to classify aquaculture as an industrial use that is subject to permitting, even though it is described as not being associated with the adverse environmental impacts that result from residential, industrial or commercial development. The exemption at 7:7E-5.1(d) only exempts the activity, not the structures needed to carry out the activity. (16)

RESPONSE: Agriculture, i.e. pasturing and growing of field crops, has not been regulated under CAFRA and will not be regulated under CAFRA as a result of these adopted rules. However, commercial or industrial development at an agricultural site will continue to be regulated under CAFRA based on the appropriate thresholds. The Department disagrees with the commenter that a general exemption from the rules should or can be granted for agriculture and more specifically, aquaculture. There is no statutory exemption for agriculture. The New Jersey Aquaculture Development Act defines aquaculture as the rearing, propagating and harvesting of aquatic organisms but unequivocally excludes the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation. A general exemption to the permit requirements is not appropriate because without Department review, aquaculture development may result in significant impacts to Threatened and Endangered Species (7:7E-3.38) and Critical Wildlife Habitats (N.J.A.C. 7:7E-3.39) or other environmentally sensitive areas. The language in the New Jersey Aquaculture Development Act shows that the Legislature recognized the potential impacts aquaculture development could have on coastal resources and chose to protect these resources by not including the construction of aquaculture facilities and support structures in the definition of aquaculture.

In these adopted rules, the Department has, within its authority under the law, facilitated aquaculture activity in the coastal zone. These rules exempt aquaculture from the impervious cover limits and vegetative requirements of N.J.A.C. 7:7E-5, 5A and 5B. This exemption will allow the development of aquaculture facilities at sites located within the Coastal Rural and Coastal Environmentally Sensitive Planning Areas where, without such exemption, the more protective impervious cover limits for these areas may have precluded this development. The Department will work with those pursuing aquaculture in New Jersey to help steer them to appropriate sites and facilitate any necessary CAFRA permits for development at those sites, but

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it cannot establish a blanket exemption for all agriculture or aquaculture activities. The Department will continue to review applications for and assess the impacts of aquaculture development on a case by case basis and will apply the regulations as appropriate for each proposed activity.

66. COMMENT: A Superior Court Judge has ordered that these rules be adopted by the end of 1999. This doesn't allow time for the Department to respond or amend the proposed rules adequately. Is this legal? (116)

RESPONSE: The Department has considered and responded to all comments timely submitted on the proposal in accordance with the Administrative Procedure Act. The Department has revised the rule upon adoption where appropriate in response to these comments. Furthermore, this adoption is accompanied by a proposal which includes further substantive amendments to the rule which the Department was precluded by the Administrative Procedure Act from making upon adoption.

67. COMMENT: No discussion has been provided regarding how these rules will impact property taxes. Since a reduced ability to develop properties will lead to reassessments and lowered taxes, these funds will have to be recouped elsewhere, such as raising assessments on property in areas that are acceptable for development. (109)

68. COMMENT: Responsible planning should include a fiscal analysis assessing the impact of the proposed regulations on the ratable tax base and tax rate of each municipality within the coastal area. Also, an economic impact analysis is necessary to determine how the proposed regulations will effect the future quality of life. By the Department not performing such an analysis, residents are being denied a full disclosure of the impact of Department's proposed action. Absent such an analysis, these regulations should not be adopted. (57)

69. COMMENT: The proposed rule amendments would have a severe impact on the business and residential communities in Atlantic County. The decreased property values would impact the local property tax and further damage prices in our community. (7, 65)

70. COMMENT: Studies should be done to assess the economic impact these rules will have on the local economies, prior to implementation. (116)

71. COMMENT: The commenter is very concerned with the impact that these rules would have on the municipal tax base given New Jersey's current system which relies on property taxes. (85)

72. COMMENT: The rules will decrease the opportunity to provide meaningful employment. (65)

RESPONSE TO COMMENTS 67 THROUGH 72: Implementing smart-growth strategies in the CAFRA area by encouraging more compact development in CAFRA centers, cores, nodes and in coastal centers by discouraging sprawl development outside of these areas is not likely to result

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in property tax increases or decreases in employment. Unplanned sprawl development does result in inefficient use of resources because it promotes extension of government supported infrastructure into previously undeveloped areas. The cost of this infrastructure expansion is passed along to local residents in their property taxes. In addition, much of this sprawl has come at the expense of the economic well being of previous developed economic centers. By encouraging, through the use of higher impervious cover limits, concentrated development in areas already developed or supported by existing infrastructure, the rules will likely result in lower costs to municipal governments because the need to construct new sewers, streets and other supporting infrastructure will be reduced. The reduction in large-scale development outside of CAFRA centers, cores and nodes, and coastal centers, along with the economic development that is encouraged under this adoption, is expected to stabilize or perhaps reduce property tax increases in these areas. Concentrated development that discourages sprawl, congestion and pollution will enhance the CAFRA region and thus increase the desirability of this area. This is expected to support strong property values for homeowners and businesses in the region. By protecting the natural resources that make the coastal region such a unique and desirable place to live, work and visit, the rules will enhance the quality of life in this region for the majority of citizens. For these reasons, the Department disagrees that the regulations should not be adopted until a more in-depth economic analysis is performed. To further delay adoption of these rules would only result in more sprawl and the potential loss of more environmental resources to inappropriate development. By continuing the planning process, issues specific to the local tax base can be addressed. The State Planning process evaluated these issues and concluded this approach would be the least costly and most effective. In addition, since these coastal centers were developed in consultation with CAFRA municipalities, it is presumed that any impacts on the local tax base were addressed at that time.

73. COMMENT: The economic impact analysis addresses the “land equity issue” by indicating that “the negative impact on individuals who want to develop in the Coastal Fringe Planning Area, Coastal Rural Planning Area and Coastal Environmentally Sensitive Planning Area should be offset by the positive impact on individuals who develop in the Coastal Metropolitan Planning Area, coastal centers, and CAFRA centers, cores and nodes”. This “winners” and “losers” scenario should be quantified to clearly illustrate the economic impact of this rule on the agriculture industry. (16)

RESPONSE: The Department is unable to specifically quantify the impacts of the rules, as suggested by the commenter. Such an analysis would require an extensive review of property inventories, property ownership and property development schemes throughout the CAFRA area as well as an evaluation of existing property development plans under the municipal zoning. However, the goal of these rules is to preserve ecologically sensitive and fragile areas and high quality agricultural land while redirecting development to areas where development already exists and infrastructure is already in place. Adopted N.J.A.C. 7:7-1.10 will enable the Department to relax the substantive standards of the Coastal Zone Management rules when their strict application would result in an extraordinary hardship to a property owner.

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74. COMMENT: In the economic impact analysis the Department contends that any negative economic impact on an individual who wants to develop property in the CAFRA area which is a result of the impervious cover limits, should be offset by the positive economic impact on individuals who want to develop in the coastal centers. It is not going to work that way. Seventy percent coverage will not occur throughout a coastal center. The site coverage will ultimately be based on local zoning. It is not a question of somebody getting hurt over here and being balanced by some extra density over there. (18)

RESPONSE: While development may be focused in different areas, that is, areas where development can be accommodated, the total amount of development in the CAFRA region should not change much due to the adoption of these rules. CAFRA generally regulates developments that are large in scale and thus more likely to have a large impact on coastal resources. Local municipalities may establish more restrictive impervious cover limits than those contained in these rules. This may result in less impervious coverage in the CAFRA area than allowed by the Department. The decision on whether to make the impervious coverage limits more stringent rests with the municipalities. In addition, any municipality may work with the Office of State Planning to redefine Planning Areas and center boundaries within the municipality, in response to local development trends and planning initiatives. Adopted N.J.A.C. 7:7-1.10 will enable the Department to relax the substantive standards of the Coastal Zone Management rules when their strict application would result in an extraordinary hardship to a property owner.

75. COMMENT: No studies have been cited which discuss the social or economic impacts to homeowners insurance as a result of the “environmentally sensitive” designation applied to the Ocean County coastal communities. What are the impacts on the availability of homeowners insurance as a result of that designation being combined with regulations mandating reduced housing density? Representatives of the Department at one of the public hearings indicated that the State would look into this issue, yet this issue has not been addressed as part of the social and economic impact analyses. (50)

RESPONSE: A review of the transcript from the public hearings on the December 1998 and August 1999 rule proposals did not identify any specific comments of Department representatives regarding the impact of the proposed rules on homeowners insurance. Furthermore, the Department knows of no impact the rules will have on the availability of homeowners insurance.

76. COMMENT: Adoption of these proposed rules prior to the State Plan Center Designation of all the municipalities in the CAFRA area would have severe social and economic impacts on the residents of the coastal area, and may have unintended long-term impacts of which the Department is unaware. (50)

RESPONSE: The Department worked with municipalities in delineating the coastal centers and, where appropriate, made changes requested by the municipalities. Municipalities can apply to the State Planning Commission for new or modified boundaries for Planning Areas, and for the

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designation of centers, cores and nodes. If the State Planning Commission approves these boundaries and the Department finds that the boundaries are consistent with the intent of the CAFRA statute pursuant to N.J.A.C. 7:7E-5B.2, the boundaries will be incorporated into the Coastal Zone Management rules. The Department does not expect to see unintended long-term impacts as a result of the coastal center delineations, since the duration of the coastal center boundaries is limited to five years (except for the barrier islands). When the municipalities within which these coastal centers are located pursue formal center designations through the State Planning Commission's process, the planning issues that the commenter is concerned about should be addressed.

77. COMMENT: By controlling development, the economic base and overall well-being of the public will be increased because the quality of our water, the quantity of our water, traffic and other similar issues would be addressed. (49)

RESPONSE: The Department acknowledges this comment in support of the rules.

78. COMMENT: According to the Dennis Township 1994 Master Plan, 41 percent of the land is already federally or State owned. The proposed rules essentially expand the state's estate. Unless you are located in one of the designated centers, these proposals can greatly reduce a property's value and severely limit future uses. With these rules comes additional loss of local control and further loss of property rights, without compensation. (116)

RESPONSE: The impervious cover limits encourage development in areas where development is already located or where the infrastructure is in place to accommodate growth, and limit the intensity of development in the Coastal Rural and Coastal Environmentally Sensitive Planning Areas. However, the limits do not preclude all development in these planning areas. Also, new N.J.A.C. 7:7-1.10 enables the Department to relax the standards in N.J.A.C. 7:7E if a landowner can show that an extraordinary hardship that would not allow the owner to realize a minimum beneficial use of the property consistent with constitutional standards would otherwise exist. Therefore, the Department disagrees that adoption of these rules will result in a taking of any property without compensation.

79. COMMENT: The planning involved with this rule, such as that associated with center designations and sector permits, will cost municipalities. Financial assistance should be made available to municipalities in the coastal area. (13)

80. COMMENT: The Department should provide detailed information on the cost to municipalities to comply with the rule proposal. (97, 106)

81. COMMENT: The commenter is concerned that the CAFRA permitting process will be more complex and as a result, additional costs will be placed on the municipalities. (65)

RESPONSE TO COMMENTS 79 THROUGH 81: There is no cost to a municipality to comply with the rules unless a municipality decides to apply for certification as a Sector Permit

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municipality. The cost for such an application would depend on the size and nature of the municipality and the proposed sector. While municipalities will incur costs to do the planning to become certified as a Sector Permit municipality, these costs should be offset by the benefit of a streamlined review of CAFRA-regulated development at the local level. This streamlined review will facilitate development and redevelopment activities in the coastal municipalities. As part of its approved coastal management program, funding through local coastal grants has been provided to coastal counties and municipal governments since October 1996 to assist in their efforts to make their local master plans and associated ordinances consistent with the CAFRA policies and thus these rules. The Department awarded 27 such grants between October 1998 and October 1999, and the grants were made available again beginning in October 1999. In addition, the Smart Growth Planning Grant Program was announced by the Governor and Department of Community Affairs on September 28, 1999. This Program makes \$3,000,000 available for planning assistance to local government. As part of this Program, the Governor directed the Department of Community Affairs to “consider the needs of the coastal area when decisions are made regarding Smart Growth Planning Funds so that that a significant share of this money is allocated to the CAFRA counties.”

82. COMMENT: The commenters are concerned that the proposal could potentially be utilized to deprive coastal communities and their residents of a fair share of State investment, including grants, loans and other forms of financial assistance. Therefore, the extent to which a local government has complied or conformed with these rules should not be considered, or accorded any weight, by any department, or instrumentality of State government in administering a grant, loan or financial assistance program, or in expending State funds. Nor should any permit applied for or granted by any State agency, such as but not limited to water permit extensions, sewer main extensions, transportation improvement projects be negatively impacted in any town or county that has complied and conformed with these rules and or has an existing need. The Department should include such language in these regulations, (13, 21, 22, 86)

83. COMMENT: Avalon has lost state grants for senior citizen housing and other things because it was not a state plan designated center. There is a concern that this rule will impact funding. (58)

84. COMMENT: It has been indicated that these designations will not influence infrastructure funding. However, the funding issue will not even be reached if the permit cannot be granted because of a three percent impervious cover limit. (57)

85. COMMENT: Are these rules going to affect infrastructure funding or grant money pertaining to barrier islands? (92)

86. COMMENT: These rules should not prevent public infrastructure expenditures in Coastal Suburban Planning Areas. (60)

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87. COMMENT: The rule may prevent Ocean County, Cape May County and the rest of South Jersey from getting transportation funds to handle the phenomenal growth already experienced there. (105)

88. COMMENT: A significant purpose of the initial State Development and Redevelopment Plan was to provide a guide for State capital investments. The adoption of these rules should include language that they will not be used to restrict capital investments in infrastructure to meet existing and future needs. Also, the rules should be amended to clarify that the coastal areas will be treated equally in the allocation of affordable housing units and the development of other State functional plans related to coastal development. (6)

RESPONSE TO COMMENTS 82 THROUGH 88: The adopted rules relate only to the Department's authority to impose impervious and vegetative cover requirements for individual properties under CAFRA. The adopted rules do not require any local government to comply or to conform to them. They are not intended to be a measuring stick to determine the qualifications of a local government to receive State aid.

The issue of infrastructure funding and permit decisions is complex. There are instances where, for example, the extension of a road, sewer line, or other such development may lead to secondary impacts that are unacceptable under the prior or these new Coastal Zone Management rules. In these situations, that development may be denied or conditionally approved in a manner so as to avoid those impacts. There may also be situations where the Department or another governmental entity may make a financial or permitting decision based in part on the likelihood that the project will qualify for a CAFRA permit. This is appropriate because it makes little sense to award funding for a project when the project cannot be built because of inconsistency with CAFRA. In situations where an existing population may need a water or sewer line or other infrastructure to meet serious health or safety needs, the Department has the authority to allow such infrastructure and to condition any permit, as necessary, to prevent unacceptable secondary impacts.

In order to allay concerns on these issues, the Department is including in the concurrent proposal elsewhere in this issue of the *New Jersey Register* an amendment that would specifically provide that municipal conformance to these rules should not impact State financial assistance decisions, certain public health and safety infrastructure permitting decisions, or transportation projects to meet existing needs.

89. COMMENT: The commenter looks forward to amended regulations that respect individual property rights, are more equitable, and do not foster "sprawl" development in rural and environmentally sensitive areas. (14)

RESPONSE: The Department believes that the adopted rules constitute a comprehensive environmental design strategy for protecting the coastal area from inappropriate development which will discourage sprawl, protect sensitive areas and is equitable. The design strategy, which is based in large part on planning decisions at the State, county, and municipal levels and reflects growth management principles, was developed with the extensive participation of the public as well as State agencies and county and municipal governments. In addition, new

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N.J.A.C. 7:7-1.10(c) will allow the Department to relax any of the substantive standards in N.J.A.C. 7:7E when their strict application would result in an extraordinary hardship. N.J.A.C. 7:7-1.10(c)1 requires that, to demonstrate an extraordinary hardship, an applicant must demonstrate that the strict application of the standards in N.J.A.C. 7:7E would prevent a minimum beneficial use of the property as a whole in accordance with constitutional standards.

90. COMMENT: This proposal severs any connection between CAFRA and the State Development and Redevelopment Plan. Thus any hope for the coastal zone being the first step to the statewide use of the State Plan has disappeared. (10)

RESPONSE: The rules use the State Plan structure of Planning Areas and formally approved centers as the basis for the CAFRA Planning Map, by which the impervious cover limits and vegetative cover requirements applicable to a given development site will be determined. There will continue to be close coordination between the Department and the State Planning Commission as the Commission reviews and approves centers and local master plans.

91. COMMENT: Galloway Township is in the unique position of being located entirely within either the Pinelands or CAFRA boundaries and is therefore faced with severe limitations on development by the State. The adoption of the CAFRA rule proposal will establish two independent, conflicting, state level review processes to be implemented by the Department and the Office of State Planning for determining acceptable growth boundaries, that is centers, as submitted by the municipalities. These processes present administrative and economic impediments to sound planning, and result in multiple standards and confusion for the public. They are based on an impractical and unrealistic understanding of land use planning. (106)

92. COMMENT: Atlantic County now has three comprehensive management plans. Pinelands and CAFRA have managed Atlantic County for almost 25 years and the State Planning Act for 15 years. The three comprehensive plans are managed by three different agencies with very little coordination. Atlantic County cannot take too much more of this and supports the Oversight Resolution that the proposed rules are inconsistent with CAFRA as well as the State Planning Act. The Department should attempt to get the job done as it was intended to, in an open and fair fashion. (82)

RESPONSE TO COMMENTS 91 AND 92: The Department acknowledges that there may be some confusion as a result of the planning and/or regulatory initiatives of three state agencies. However, the Pinelands Commission and the Department have coordinated plans and regulations for many years through a memorandum of agreement. The State Planning Commission and the Pinelands Commission have also recently adopted a memorandum of agreement to coordinate agency plans, programs and initiatives. A key objective of these CAFRA rules is to support a cooperative, coordinated planning process with the coastal counties and municipalities and the State Planning Commission. The Department believes that the development of consistent plans through this process will facilitate sound planning rather than impede it. The Department also believes these rules are consistent with the CAFRA legislative amendments of 1993 calling for close coordination between the CAFRA rules and the State Development and Redevelopment

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Plan.

93. COMMENT: Integrating the CAFRA rules with the State Development and Redevelopment Plan is a small step ahead in controlling sprawl. (91)

94. COMMENT: Conforming the CAFRA regulations to the State Development and Redevelopment Plan is sensible. (44)

RESPONSE TO COMMENTS 93 AND 94: The Department acknowledges these comments in support of the rules.

95. COMMENT: The ostensible purpose for the regulations is to “closely coordinate” the CAFRA rules to the State Development and Redevelopment Plan. The commenter believes that the regulations adopted by the Department in July 1994 were sufficient to accomplish this objective. There is no legislative mandate that CAFRA conform to the State Development and Redevelopment Plan and in fact, the State Plan as adopted in 1992 said it was not to be used as a regulatory document. (57)

RESPONSE: The Department believes that the adopted rules are closely coordinated with the State Plan, that they are substantially consistent with the goals and policies of the State Plan, and that they are consistent with the purposes of the 1993 CAFRA legislative amendments. The Department agrees that many of the existing Coastal Zone Management rules are already consistent with various State Plan objectives.

96. COMMENT: The rules should provide more incentives and facilitate redevelopment whenever possible. All potential obstacles should be removed. To do otherwise would be inconsistent with the spirit of the State Plan. (85)

RESPONSE: Consistent with the policies of the State Plan, the adopted rules do encourage more development in areas that have existing development and infrastructure capacity, or are planned for additional growth and infrastructure. CAFRA-regulated development in these areas will be eligible for higher impervious cover limits than other areas deemed inappropriate for development. In addition, the new Sector Permit at N.J.A.C. 7:7-9 for municipalities should encourage and facilitate development in any CAFRA center, or in CAFRA core or CAFRA node located in a Coastal Metropolitan Planning Area or Coastal Suburban Planning Area, by providing a simplified permit application and an abbreviated review process. The goals of the Sector Permit are to (1) establish a more timely and predictable regulatory process; (2) ensure that plans and regulations are compatible between local, regional and state agencies; (3) ensure that planning precedes and guides regulatory activities; and (4) eliminate duplication in planning and regulatory activities.

97. COMMENT: The summary of the proposal indicates that these rules will shift the distribution of populations to the more developed areas and that somehow more efficient public transportation to these areas will be provided in order to reduce air pollution and vehicle miles

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traveled. However, it does not say how this redistribution of population will happen, except for forcing these rules on the residents of the coastal zone. In addition, the rules do not say who will provide increased mass transit or how it will be funded. The reality is that market forces will direct where people will live and that mass transit in the coastal area of New Jersey is practically a non-existent option. The reality is that of the 408,550 acres in Ocean County, 45.4 percent is located in the Pinelands and is subject to development limitations, and 43.6 percent is regulated by CAFRA. (50)

RESPONSE: Consistent with the State's longstanding coastal policies, CAFRA, and the policies of the State Plan, the rules concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development, encourage the preservation of open space, and ensure the availability of suitable waterfront areas for water dependent activities. They also recognize existing developed places and encourage more development in areas that have existing infrastructure and capacity, or are planned for additional growth and infrastructure. In addition to providing numerous forums, public meetings and hearings on these rules and coastal issues in general, by linking the rules with the State Plan, the Department is supporting a comprehensive coastal planning process to address current and future environmental and growth management issues. Provision of mass transit is beyond the scope of this rule; however, through the establishment of planning partnerships and open dialogue, issues like mass transit can be addressed. In addition, since the new rules encourage concentrated development and discourage sprawl, they may help make mass transit more viable.

98. COMMENT: It is hoped that the State Planning Commission will adopt in the final State Development and Redevelopment Plan provisions for nodes and corridors and the plan endorsement process that has been proposed as part of the current cross acceptance and is largely reflected in the proposed CAFRA rules. For the CAFRA II rules to be effective, the State Development and Redevelopment Plan must move quickly to finalize the interim boundaries set forth by the Department. One of the difficulties that municipalities and Ocean County have had in commenting on these rules and in conducting cross acceptance is that it is still unclear whether the State Planning Commission will adopt the master plan endorsement program and other land use concepts incorporated into the CAFRA II regulations. The commenter supports these concepts and urges the State Planning Commission to incorporate them into the final plan. (6)

99. COMMENT: The proposal includes cores and nodes, yet the State Planning Commission has not adopted these planning concepts. (119)

RESPONSE TO COMMENTS 98 AND 99: The Department has included cores and nodes in the adopted rules to recognize these areas of development that the State Planning Commission is anticipated to include in its plan endorsement process under the revised State Plan. The Commission believes that the existing center designation process could offer a more comprehensive review of local planning and development documents and implementation mechanisms, and is developing an updated process that considers a wider range of planning and development issues, and recognizes varied development patterns. This process is described in the State Development and Redevelopment Plan: Interim Plan, March 31, 1999, in the section

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titled “Statewide Policies: Comprehensive Planning.” Under the new process, centers, cores and nodes would be delineated and endorsed, or designated, as part of a larger plan. The Department will continue to be an active participant in this process.

100. COMMENT: The statutory language “closely coordinate” with the State Plan is expressed in the plural, that is, the proposal must be closely coordinated with the provisions of the State Plan. However, the proposal relies on only one provision of the State Development and Redevelopment Plan, that of the Resource Planning and Management Structure. While the Resource Planning and Management Structure is designed to be the framework for implementing the State Development and Redevelopment Plan’s goals and policies, the proposal’s regulatory application of the Resource Planning Management Structure is limited only to its spatial aspects, that is the planning area boundaries identified in the Resource Planning Management Map.

The Resource Planning Management Structure and Resource Planning Management Map are only one planning and implementation mechanism of the State Development and Redevelopment Plan. In addition to spatial planning concepts, the State Development and Redevelopment Plan also includes the Statewide Policy Structure. The policy content of the Statewide Policy Structure applies and controls the Resource Planning Management Structure and Resource Planning Management Map. Failure to recognize and address the distinctions and linkages between spatial planning concepts and the policy framework of the State Development and Redevelopment Plan is a fatal flaw of the proposal’s attempt to satisfy the statutory mandate of “close coordination.”

The proposal contains no technical standards or criteria to integrate the spatial elements of the Resource Planning Management Structure and Resource Planning Management Map with the policies of CAFRA. For example, the proposal itself acknowledges that impervious cover is but a single indicator of water quality. The proposal has conceptual flaws in translating regional cumulative impervious cover considerations to site specific impervious cover. There is a vast difference in water quality impact between an individual site coverage of three percent and a regional or watershed scale coverage. Yet the site-specific coverages are in no way related to regional coverages in the proposal. This is a fatal flaw that ignores cumulative impact. (119)

101. COMMENT: In pursuing these objectives, the Department has proposed to utilize the Resource Planning Management Map of the State Plan as the basis for its CAFRA Planning Map. In reaching this determination, the Department has concluded that the “boundaries already drawn by the State Planning Commission, the purposes for which they were established, and the factors that determined how the lines were drawn” are in keeping with the purposes of the CAFRA statute (31 NJR 2044). These “factors” are expressed within the State Development and Redevelopment Plan as specific policy, policy intent and implementation strategies for each of the Planning Areas. Additionally, these factors influence where and how the Planning Areas, which collectively make up the Resource Planning Management Map, are located on the landscape.

The Department should clarify the specific policies, policy intent and implementation strategies that form the basis of the CAFRA Planning Map (as found in the applicable sections of the State Development and Redevelopment Plan) and that apply to the specific planning areas by expressly including them within the definitions of the planning areas at 7:7-9.2 and 7:7E-5.2.

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The Department should also clarify the rule by expressly noting in appropriate sections that the rules are to be applied in a manner consistent with the policies, policy intent and implementation strategies of the State Development and Redevelopment Plan, both comprehensively and as pertains to specific planning areas. Appropriate sections of the rule include but are not limited to N.J.A.C. 7:7-9.2 Coastal Permit Program Rules – Sector permit: 7:7E-1.5 Coastal Zone Management Rules-Coastal Decision-making process; 7:7E-2 Location, Use and Resource Rules; 7:7E-5.2 Definitions; 7:7E-6 General Location Rules; 7:7E-7 Use Rules; 7:7E-8 Resource Rules. (18)

102. COMMENT: The regulations should include definitions of State Plan planning areas, centers, cores and nodes, as well as descriptions of the planning areas intent, policies, goals and objectives, in State Plan language, with references. (32)

RESPONSE TO COMMENTS 100 THROUGH 102: The Legislature recognized in 1993 the importance of coordinating coastal regulation with the provisions of the State Plan. In response, the Department looked to the State Plan for guidance in developing these new rules and amendments to the CAFRA regulations. The adopted changes include using the State Plan's Resource Planning and Management Map as the basis for the CAFRA Planning Map, which replaces the Coastal Growth Ratings used in the prior rules in Subchapter 5. The planning areas and other spatial planning concepts of the State Plan's Resource and Management Planning Structure thus are reflected in the CAFRA Planning Map. Also, as explained in the response to comments 359-362, the Department believes that the Coastal Zone Management rules overall are coordinated with the environmental protection aspects of the State Plan and are consistent with the legislative goals expressed in the CAFRA statute. In a concurrent proposal in this Register, the Department is proposing new rules at N.J.A.C. 7:7E-5B.2 that describe the Coastal Planning Areas. The proposed descriptions include policy objectives for each Coastal Planning Area.

103. COMMENT: The proposed regulations would decimate development in the coastal area in favor of metropolitan centers in Northern New Jersey. The Department should negotiate further with municipal officials and let them decide on appropriate land uses for their areas, which is what they were elected to do. They represent the landholders who have a vested interests in their sites. (113)

104. COMMENT: The State Planning Commission allows much more public opportunity for communities to be involved in the process and it will also keep the coastal zone aligned with the rest of the state, which is involved in the State Plan cross acceptance process. For these regulations to be effective, the Department must eliminate this second group of maps and designations and continue to "closely coordinate" with the State Plan by restoring the language that achieved this goal. (10, 52)

105. COMMENT: While the commenter appreciates the opportunity to react to proposed rules at public forums and via letters, it is important that representatives at the local level are given the opportunity to get into the planning process before rules are proposed. The state will be well served by supporting the use of local planning talent as they develop CAFRA rules. Not only

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will the rules be better but also the state will be building consensus in the process. (65)

RESPONSE TO COMMENTS 103 THROUGH 105: The Department has been working on revisions to the coastal regulations for several years and has solicited and received significant local input. In February 1994, the Department published a Notice of Public Meetings and Opportunity for Public Comment in the New Jersey Register (see 26 N.J.R. 1003(a); February 22, 1994), to engage the public in a discussion of the concept of establishing impervious cover limits for CAFRA development project sites based on the location of the sites in Planning Areas and/or centers. In December 1997, the Department released the text of draft subchapter 5 rules regarding impervious cover and vegetative cover requirements applicable in the CAFRA area (see "Notice of Release and Request for Public Comment on Draft Rules Amending the Rules on Coastal Zone Management Concerning Intensity of Development" at 29 N.J.R. 504(a); December 1, 1997). The Department received comments on the draft rules from county planning departments, municipalities, environmental and builders' groups, and citizens.

On December 7, 1998, the Department published a proposal of new rules and amendments. See 30 N.J.R. 4167(a). The official comment period was 60 days, and was subsequently extended an additional 60 days. See 31 N.J.R. 93(a). In addition, a month before the Register publication, the Department made the proposal available electronically on its internet website and distributed it to local governments and interest groups. The August 2, 1999 reproposal provided a 60-day comment period during which the Department held six public hearings in the CAFRA area, placed an unofficial version of the rule proposal on the Department's website several weeks before publication in the New Jersey Register, allowed the submittal of comments electronically via the website, and received written comments.

The Department believes that these rules are another step in implementing a comprehensive coastal planning process to address current and future environmental and growth management issues that will enable local governments to have a greater role in coastal planning initiatives.

The rules make it clear that there will be close coordination between agencies, as there has been in the past and in the drafting of these rules. The Department is committed as a member of the State Planning Commission to actively participating in planning and development discussions with coastal counties and municipalities.

106. COMMENT: The rule must be reworked to remove the impediment to local planning in the coastal zone. Specifically, the Department should clarify what standards will be applied in rejecting local planning certified by the State Planning Commission. It should also be made clear that all such planning will be automatically accepted by the Department unless it is in direct violation of the Coastal Zone Management rules. In view of the fact that the Department has a seat on the State Planning Commission which approves these plans, it is an oxymoron to consider a consistent plan in violation of CAFRA rules. If such clarification can be legally upheld it removes the technical impediment. However, it does not remove the potential for mishandling of the rule in the future and certainly will not motivate municipalities to move to a higher level of planning activity. In short, the rule itself must be re-worked.

In the original rule proposal CAFRA automatically utilized map changes that were approved by the State Planning Commission. To be approved by the State Planning Commission,

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these changes would be the result of a comprehensive planning effort and deemed consistent with the State Development and Redevelopment Plan and the goals of the State Planning Act. The secondary impact of the prior rule was to motivate municipalities and counties to update their planning based on existing infrastructure and natural resource protection. Under these proposed rules there will be little if any incentive to undertake good planning at any level in the CAFRA area. (5)

RESPONSE: The Department believes that these rules support a comprehensive coastal planning process to address current and future environmental and growth management issues that will enable local governments to have a greater role in coastal planning initiatives. The Department has an obligation in the course of administering the Coastal Zone Management Program to ensure that new or changed boundaries are consistent with the purposes of the CAFRA statute and of the Coastal Zone Management rules. This framework and planning process should identify and resolve many critical issues prior to the State Planning Commission's action on boundaries and the Department's subsequent review of them. To help allay the concerns raised, however, the Department is clarifying the standards to be employed in reviewing the boundary decisions of the State Planning Commission in the concurrent proposal elsewhere in this Register. Proposed N.J.A.C. 7:7E-5B.2 states that the Department will reject or reject and revise a boundary only upon a finding that accepting the State Planning Commission approved boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be clearly inconsistent with the purposes of CAFRA and the Coastal Zone Management rules.

107. COMMENT: The CAFRA rule proposal establishes impervious cover limits and Coastal Town Boundary lines, which supplant the local planning process. (97, 106)

RESPONSE: The impervious cover limits and vegetative cover percentages proposed in subchapters 5, 5A, and 5B apply only to new development (including redevelopment) that meets certain specified thresholds for regulation under CAFRA. The Department acknowledges local government efforts and encourages local governments to continue to tailor their zoning requirements to meet the needs of their local citizens. The impervious cover and vegetative cover requirements in the Coastal Zone Management rules do not in any way prevent local governments from imposing more stringent local requirements on development if they determine such further restrictions are appropriate to address local circumstances. In the concurrent proposal in this Register, the Department is proposing a provision that makes it clear that the Coastal Zone Management rules do not preempt a municipality from adopting a land use ordinance that would result in more restrictive impervious cover limits or vegetative requirements for a development site. The coastal planning areas and center boundaries established through the cross-acceptance process with the State Planning Commission should incorporate local plans and initiatives. In addition, any municipality may petition the State Planning Commission for a designated center, based on the planning concerns and growth projections of that municipality. The boundaries of the designated center, if accepted by the Department under N.J.A.C. 7:7E-5B.2 would supercede the boundaries of the corresponding coastal center previously delineated by the Department.

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108. COMMENT: There is no regional planning basis (e.g. allocation of projected growth or capacity based analysis) for the number, size, location, or development intensity of the magnitude of growth associated with the allowable impervious cover and designated centers. The result is that allowable growth under the proposal bears no relationship to growth levels planned for by either municipal master plans/zoning ordinances or the State Development and Redevelopment Plan's projected rates or patterns. Informal "build-out" calculations conducted by the commenter, based on land area and development density at the impervious cover limits, demonstrate a level of growth 3-5 times the population and employment projections over the 20 year planning horizon identified in Appendix A of the State Plan. (119)

RESPONSE: The Department has and will continue to work with the Office of State Planning and the State Planning Commission to ensure that development intensities associated with the allowable impervious cover limits result in a magnitude of growth consistent with consensus demographic projections that result from the cross-acceptance process with state, local and county agencies. These rules are not intended to curtail growth or development, but to steer it into appropriate areas. The selected impervious cover requirements are intended to achieve that goal. Municipalities remain able to impose stricter density limits in response to local conditions.

109. COMMENT: The commenter supports the State's policy objective of preserving "bottom-up" land use planning. (17)

RESPONSE: The Department acknowledges this comment in support of the rules.

110. COMMENT: The commenter believes that only through a comprehensive planning process truly reflecting the needs and resources of our coastal counties and municipalities, can there ever be an effective land use regulation program that goes beyond current State protection of critical environmental resources. The continuing concerns over sprawl, development intensities and the accelerating loss of open space opportunities must be addressed in a fair and rational manner. The Department tries to address these concerns through regulations and calls it "smart growth;" the commenter prefers to address these concerns by good planning. For this to happen, a full complement of planning tools must be pooled at State, County and municipal levels. These basic tenets must be addressed first in order to make such a program acceptable and implementable at the local levels. (82)

RESPONSE: The Department does not intend that the adopted rules will reduce the amount of development in the coastal area. While the location of development may be focused into different areas, that is, areas where development can be accommodated, the total amount of development in the CAFRA area should not change considerably due to the adoption of this rule, and thus regional economies should not be affected. The Department believes that the adopted rules will better enable local governments to work with the Department to explore different growth scenarios and attendant impacts and costs. These rules also promote the Department's effort to build partnerships with coastal municipal and county governments in the formulation of coastal planning and development decisions, reflecting the fundamental principle that

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participation of the public and local governments is vital to meaningful land use policy and planning. The Department welcomes regional planning initiatives from the coastal counties.

111. COMMENT: The planning process should be left to local professionals that best represent needs and concerns of immediate regions. (7)

112. COMMENT: The Department should defer to local master plans and local planning rather than imposing land controls through planning areas and centers since local government is more familiar with local situations. For example, cluster housing may create problems such as traffic congestion. (66)

113. COMMENT: Absecon City is experiencing steady growth and endeavors to manage development effectively and intelligently, recognizing the importance of environmental protection and having established Conservation Zones. This rule proposal does not reflect any awareness of this area and does not protect environmentally sensitive areas or identify appropriate growth areas. The adoption of these rules will have a significant impact on the future development of Absecon City. (97)

RESPONSE TO COMMENTS 111 THROUGH 113: The Department acknowledges local government efforts and encourages local governments to continue to tailor their zoning requirements to meet the needs of their local citizens. The impervious cover and vegetative cover requirements in the Coastal Zone Management rules do not in any way prevent local governments from imposing more stringent local requirements on development if they determine such further restrictions are appropriate to address local circumstances. These rules also promote the Department's effort to build partnerships with coastal municipal and county governments in the formulation of coastal planning and development decisions, reflecting the fundamental principle that participation of the public and local governments is vital to meaningful land use policy and planning. CAFRA was enacted in response to legislative concerns that the coastal area warranted protection at the state level, and that regional planning was needed to best protect this area for all State citizens.

Since the City of Absecon contains areas identified as both Coastal Metropolitan Planning Area and Coastal Suburban Planning Area, where impervious cover limits of 80 percent and 30 percent, respectively, apply, this rule does allow for growth within this municipality. Furthermore, the environmentally sensitive areas of Absecon City will continue to be protected through the application of Special Area rules at N.J.A.C. 7:7E-3 which apply to all CAFRA-regulated development, as well as through the designation of other portions of the municipality as a Coastal Environmentally Sensitive Planning Area.

114.COMMENT: People who now want to develop in the Coastal Environmentally Sensitive Planning Area are being penalized because they waited. New regulatory programs cause development because people build to preserve their property rights rather than wait and have to comply with new, more stringent rules. (102)

RESPONSE: The Coastal Zone Management rules were first adopted in 1978 and have always

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contained the substantive standards for determining development acceptability and the environmental impact of projects for which coastal permit applications are submitted. The application of these rules since that time could result in an impervious cover limit of three percent for certain sites and developments. The adopted rules establish a new approach for determining impervious cover limits and vegetative cover percentages for development sites in the CAFRA area, and respond to 1993 legislative amendments to the CAFRA statute (N.J.S.A. 13:19-17). The rules further CAFRA's mandate to develop compatible land uses in order to preserve the most ecologically sensitive and fragile areas from development by encouraging development in compact growth areas and limiting it in outlying and environmentally sensitive areas. The Department expects that growth will continue in all areas of the coast.

115. COMMENT: One of the main reasons for this rule proposal appears to point to the preservation of the greatest amount of ecologically important lands, thereby encouraging development or concentrating development where development already exists and where infrastructure is in place. This concentration of development is planned to shift the distribution of population and provide jobs and services closer to homes of residents. Public transportation is designed to benefit clean air mandates and lessen the traffic on already overcrowded highways. This planned smart growth has been less than successful in different parts of the country. Limiting the major development potential to the planned growth areas is not what most people want or deserve for the land they have invested their resources in. (12)

RESPONSE: The rules respond to 1993 legislative amendments to the CAFRA statute (N.J.S.A. 13:19-17), and further CAFRA's mandate to develop compatible land uses in order to preserve the most ecologically sensitive and fragile areas from development by encouraging development in compact growth areas and limiting it in outlying and environmentally sensitive areas. These are basic principles of growth management. Growth management is any effort to induce, restrain, or accommodate development, by any level of government, and has been a tool used by municipal, county and state government for decades. This is the foundation of current "smart growth" initiatives in New Jersey and around the country. The delineation of Coastal Planning Areas indicates where growth-supporting infrastructure now exists, as well as broad regions where environmentally sensitive features and ecosystems are. The Coastal Zone Management rules have historically encouraged growth where development already exists, and discouraged it where it may harm coastal resources. The adopted rules build on this premise, but use a more refined land classification system that depicts where development now exists, where infrastructure is in place or planned, and where sensitive features are located.

116. COMMENT: The United States and New Jersey have made great strides in the recent past to help the environment and maintain a quality of living for its residents. The demographics and work patterns have changed over time and people are content with their way of life. Allowing the government to dictate where and how we should work and where and how we should develop land is not a practice to be taken lightly. If government is concerned with the environment and sprawling development, it should take the initiative and encourage companies to use their workforce more productively by allowing work at home and scheduling differently. By putting more restrictive regulations on development areas in towns with dwindling economies, the

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government is helping to drive the final nail in the coffin of these once proud historic towns.
(12)

RESPONSE: The Departments acknowledges that demographics and work patterns have changed over time. The adopted rules support a comprehensive planning process in conjunction with environmental regulations so that local governments may have a greater role in coastal planning initiatives, and the State is better able to make decisions on infrastructure investments and other issues. The Department expects that growth will continue in all areas of the coast. However, the Department also believes that planning and encouraging growth and development in areas that have the infrastructure to accommodate it, particularly in compact, mixed use centers, will enhance local and regional economies, rather than detract from them. The rules also promote the Department's effort to build partnerships with coastal municipal and county governments in the formulation of coastal planning and development decisions, reflecting the fundamental principle that participation of the public and local governments is vital to meaningful land use policy and planning.

117. COMMENT: There is nothing wrong with sprawl if it is done intelligently. The rules should not restrict development, although development should have green acres. Municipalities have plenty of rules to regulate development. (60)

RESPONSE: The rules encourage development in areas that are best able to accommodate it, and seek to discourage development in rural and environmentally sensitive areas that have sensitive natural resources and lack the infrastructure required to accommodate urban-level growth. The Department acknowledges local government efforts and encourages local governments to continue to tailor their zoning requirements to meet the needs of their local citizens. The impervious cover and vegetative cover requirements in the Coastal Zone Management rules do not in any way prevent local governments from imposing more stringent local requirements on development if they determine such further restrictions are appropriate to address local circumstances. Each municipality has the option of petitioning the State Planning Commission for changes in centers to reflect planning concerns and growth projections of that municipality. The planning areas and center boundaries established through the cross-acceptance process with the State Planning Commission should incorporate local plans and initiatives.

118. COMMENT: The existing character of the "villages and hamlets" referred to as "coastal centers" would be adversely impacted by 50-60 percent impervious land coverage. Conceivably some of these coastal centers will develop sewage infrastructure and existing local zoning may allow for higher than existing development densities. Based on averaging, the proposed zone might allow for as many as six homes on an acre, a marked deviation from current zoning. The commenter realizes that clustering can accomplish some environmental goals. The commenter concurs with the clustering concept, yet this concept is being balanced against the preservation of the rural and historic landscape which exists in these villages. Imposing a lower density by lessening the impervious land coverage and reducing the overall size of specified coastal centers should help preserve these landscapes. (46)

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RESPONSE: The delineation of coastal centers is for the purposes of CAFRA permits only. The impervious cover limits and vegetative cover percentages of subchapters 5, 5A, and 5B apply only to new development (including redevelopment) that meets certain specified thresholds for regulation under the State's coastal permitting program. The Department acknowledges local government efforts and encourages local governments to continue to tailor their zoning requirements to meet the needs of their local citizens. The impervious cover and vegetative cover requirements in the Coastal Zone Management rules do not in any way prevent local governments from imposing more stringent local requirements on development if they determine such further restrictions are appropriate to address local circumstances. The concurrent proposal published elsewhere in this Register includes a new rule provision that expressly states this.

119. COMMENT: The Department should coordinate with the affected municipalities to evaluate projected population trends for the next 20 years and ascertain how such growth will be accommodated. (97)

RESPONSE: By closely coordinating the coastal regulatory program with regional planning among state, county and municipal governments, the Department believes that the adopted rules will better enable local governments to work with the Department to explore different growth scenarios and attendant impacts and costs. The New Jersey Office of State Planning has developed a growth-accommodation model that can test various scenarios based on preferred population projections and distribution, and spatial inputs. The model can analyze regional development patterns and quantify costs and impacts such as population distributions, land consumption, infrastructure (roads, sewers, water supply) costs and impacts on schools. The Department intends to work with any interested party and the Office of State Planning to utilize the growth accommodation model and other tools to help plan for and accommodate future growth in the CAFRA area.

120. COMMENT: The objective of this rule is to force population into urban areas and place disincentives in other areas of Cape May County. (58)

121. COMMENT: If the State channels development to urban areas, without planning in advance, the State will wind up strangling itself in congestion. (13)

RESPONSE TO COMMENTS 120 AND 121: The rules further CAFRA's mandate to develop compatible land uses in order to preserve the most ecologically sensitive and fragile areas from development by encouraging development in compact growth areas and limiting it in outlying and environmentally sensitive areas. The rules also support a comprehensive planning process that will allow counties and municipalities a greater role in coastal planning initiatives. These cooperative planning initiatives are expected to address growth management concerns including congestion, in urban areas throughout the CAFRA area. Areas of existing development and infrastructure are identified throughout Cape May County. Higher impervious cover limits in centers and some coastal planning areas provide development incentives in all counties and municipalities.

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122. COMMENT: The commenter is concerned that the restrictive nature of these rules will restrict appropriate regional development and thus decrease the opportunity to provide meaningful employment. (65)

RESPONSE: The rules are not designed to restrict growth but to redirect it to those coastal areas that can best accommodate development. By concentrating the pattern of development in coastal and CAFRA centers and the Coastal Metropolitan Planning Area, employment opportunities and commercial services are expected to be closer to residential areas.

123. COMMENT: The proposed CAFRA regulations have been found to be seriously flawed and predicated upon an impractical and unrealistic understanding of land use planning. (97)

RESPONSE: The Department has historically used impervious cover and vegetative cover requirements as a way to ensure that CAFRA regulated development in the coastal zone is protective of natural resources. The adopted rule will continue this practice using updated boundaries based on local input through the State Development and Redevelopment Plan cross-acceptance process, thus fostering a cooperative land use planning process.

124. COMMENT: These proposed rules would have a negative impact on development in the Monmouth-Ocean County area because they seek to reduce the size of developments outside of centers. (109)

RESPONSE: The rules allow the highest impervious coverage for developments in centers (50 percent to 80 percent), the Coastal Metropolitan Planning Area (80 percent) and the Coastal Suburban Planning Area (30 percent). This range of coverages allows for various development types and intensities throughout the coastal area. Since the CAFRA area of Monmouth County is entirely a Coastal Metropolitan Planning Area, with an impervious cover limit of 80%, this rule will not negatively impact development in this area. In Ocean County, the coastal center boundaries have been delineated in such a way as to include areas for future high intensity development, while excluding large environmentally sensitive areas from the coastal centers. These rules, therefore, balance the protection of coastal resources with the opportunity for future development.

125. COMMENT: The State Development and Redevelopment Plan was not originally intended to be applied to land use planning decisions in the coastal zone. The original intent of the State Development and Redevelopment Plan was to serve as a guide for State capital investments and State permit decisions which greatly influence development and redevelopment. Since the passage of the State Planning Act, it has been unclear how State agencies would relate the CAFRA and Pinelands Areas to the State Development and Redevelopment Plan. The Legislature required in CAFRA II close coordination with the State Development and Redevelopment Plan. (6)

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RESPONSE: The Department believes that these adopted rules provide for the required close coordination between CAFRA and the State Development and Redevelopment Plan, and that its prior rules also addressed many goals of the plan.

126. COMMENT: Throughout the proposed regulations the Department has acknowledged the State Development and Redevelopment Plan as its basis for future site development potential in the coastal region. This action will significantly restrict development. The stated logic for the adoption of the State Plan development guidelines is to discourage sprawl and focus development in existing urban areas (“infill”).

Through policy and public investment, the State has encouraged further casino development in Atlantic City. Projected casino growth in the next decade will result in significant expansion of direct casino employment and indirect or secondary employment and population growth.

The future growth potential of Atlantic City and the associated impacts and requirements for South Jersey have not been addressed by either the Department or the Office of State Planning. However, the Department now proposes to establish new and significant restrictions upon growth in the coastal areas of Atlantic, Cape May and Ocean Counties (in addition to the balance of the coast). These new regulations are inconsistent with Atlantic City’s growth potential. Clearly Atlantic City cannot accommodate the full impact of new jobs and secondary commercial development that the public sector has encouraged. The obvious consequence of (1) the full development of Atlantic City as a tourist destination and (2) restrictive development regulations in the coastal area is that Atlantic City employees will be forced to find homes further and further from their work. Development will have to occur primarily beyond the CAFRA area and beyond the jurisdiction of the Pinelands. This inconsistent combination of public policies will encourage the sprawl that the Department seeks to prevent. Associated with that sprawl will be increases in commuting time and distance, reduced potential for mass transit, increased highway congestion and air pollution and the consumption of non-renewable resources.

The Department, in conjunction with the Office of State Planning should undertake an immediate assessment of these issues and develop regulations which will discourage this form of sprawl in South Jersey. (101)

127. COMMENT: Atlantic City faces considerable growth in the next five years. Between Pinelands and CAFRA regulations (existing and proposed), opportunities are extremely limited to accommodate this growth within Atlantic City. Consequently, casino workers, as they have in the past, will be forced to live further and further from their jobs. New layers of development constraints for the coastal communities of Atlantic City will encourage the sprawl that the regulations purport to oppose. The jobs will be in Atlantic City and the employees will be forced to live outside of the area. Increased journey to work trips, automobile usage, reduced transit potential, increased non-point source emissions and greater pressure for land for parking will occur. (90)

128. COMMENT: The Department and the State Plan have not addressed the growth potential of Atlantic City, but the Department now proposes to establish new and significant restrictions

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upon growth. Atlantic City employees will be forced to find homes further from work. Development will have to occur outside CAFRA and Pinelands, leading to sprawl and increased commuting. (45)

RESPONSE TO COMMENTS 126 THROUGH 128: The adopted rules are not intended to significantly reduce the amount of development in the CAFRA area, nor affect the Pinelands Comprehensive Management Plan. While the location of development may be focused into different areas where development can be accommodated, the total amount of development in the CAFRA region should not change considerably, and thus regional economies should not be affected.

The Department has long recognized the importance of Atlantic City and has worked to accommodate the needs of the City, the gaming industry and the region. This rule also includes a new "Atlantic City rule." The Atlantic City rule establishes Atlantic City as a "special area" under the Coastal Zone Management rules and is intended to promote development in that city by specifically allowing casino and hotel development on existing amusement piers. The Atlantic City rule provides standards for allowable development on and over the Boardwalk and at oceanfront street-ends. The rule also includes provisions to maintain and enhance public access to the beach, consistent with the public trust doctrine. The Department does not believe that this rule will significantly alter existing casino employee housing patterns, since there are numerous coastal centers toward which future housing development may be channeled.

Through these adopted rules, the Department seeks to link more closely state and regional planning initiatives with local planning. These regulations replace a site-by-site decision making process for developments within the CAFRA area with a permit decision-making process that reflects an inclusive planning effort. Rather than relying on the growth regions and indicators of development potential that the Department initially promulgated in 1978, this new framework is a comprehensive environmental design strategy to protect the coastal area from inappropriate development. The design strategy reflects growth management principles, and was developed with the extensive participation of the public as well as of State agencies and county and municipal governments. Because the rules have been closely coordinated with the infrastructure and development plans of State, local, and county governments, development permitting decisions in the CAFRA area will be made in a more consistent, predictable, cost-efficient, and expeditious manner.

These rules respond to 1993 legislative amendments to the CAFRA statute (N.J.S.A. 13:19-17), and further CAFRA's mandate to develop compatible land uses in order to preserve the most ecologically sensitive and fragile areas from development by encouraging development in compact growth areas and limiting it in outlying and environmentally sensitive areas. These rules also promote the Department's effort to build partnerships with coastal municipal and county governments in the formulation of coastal planning and development decisions, reflecting the fundamental principle that participation of the public and local governments is vital to meaningful land use policy and planning. The Department believes that the cooperative planning process supported by these rules is the most effective manner in which to identify and seek resolutions to the regions' growth and infrastructure needs.

129. COMMENT: The State Plan left out the Pinelands, CAFRA and Hackensack

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Meadowlands. This is not effective. The Pinelands Comprehensive Management Plan was not voluntary and therefore it worked. The CAFRA regulations are voluntary and are not working. This proposal will result in the Department continuing to hand out CAFRA permits. CAFRA planning must be mandatory, not voluntary. (103)

RESPONSE: CAFRA regulatory thresholds are established in the statute, and thus are not voluntary. The 1985 State Planning Act relied on the adopted plans and regulations of the Coastal Area Facility Review Act, the Pinelands Commission and the Hackensack Meadowlands Development Commission. In 1993, the State legislature directed the Department to closely coordinate the CAFRA regulations with the State Development and Redevelopment Plan. The Department believes that adopting these revised rules and implementing a coordinated planning process linked to the State Plan is the most effective way to implement a meaningful coastal plan.

130. COMMENT: Development along the Route 70 corridor and throughout the coast has increased markedly in the last few years along with concomitant traffic, sprawl development and loss of forests. Municipalities cannot or will not control this sprawl, which has resulted in over-development. The old traffic arteries (Routes 37, 70, 35, 9 and 88) cannot handle the traffic and public transportation is not readily available. The commenter urges greater planning. (56)

RESPONSE: The Department recognizes the issues regarding traffic and development, and notes that the primary objective of these adopted rules is to replace a site-by-site decision making process for developments within the CAFRA area with a permit decision-making process that reflects an inclusive planning effort. The rules reflect growth management principles and were developed with the extensive participation of the public as well as of State agencies and county and municipal governments.

131. COMMENT: The Department describes this rule proposal as a planning document, but it lacks basic underlying planning to support it. The Department has failed to analyze how much growth is expected to occur within the coastal areas, or where and to what extent that growth can be accommodated. Although the Department's proposal asserts that "the same amount of residential and commercial development as would result from typical sprawl development is expected to be accommodated in a concentrated development pattern" under the proposed regulations, no analysis or statistics to support this statement have been supplied by the Department. (57)

132. COMMENT: The Department's basis and background statement provides no facts that can either confirm or refute the commenter's preliminary build out analysis. Therefore, in a subsequent rule proposal, the Department should calculate and allocate growth in the coastal zone, in accordance with the policies and growth projections of the State Development and Redevelopment Plan.

Should the Department decide to adopt the proposed rule, the response document should include a simplified build out and impact analysis. The analysis should identify the allowable growth, based on the proposal's impervious cover limits and designated centers. This should

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include, at a minimum, projections of growth of population, employment, housing, demand for water supply, wastewater roads and schools, pollutant loading, fiscal impacts, especially of schools and road infrastructure. Because the proposal claims to be growth management, the adoption document should also include a capacity analysis of infrastructure and environmental systems, as well as a comparison of growth under the proposal versus municipal land use planning. (119)

133. COMMENT: The Department should provide a description and plans showing build-out of land under these regulations over 5, 10, 15 and 20 years to assist in evaluating the proposed regulations. (10)

134. COMMENT: There is no evidence of studies from the Department that discuss how much growth is needed in the coastal zone based upon population growth projections. Why is the State Development and Redevelopment Plan being implemented in such a small portion of New Jersey when “suburban sprawl” and traffic problems are much more prevalent in the northern portion of the State? (109)

135. COMMENT: The proposal has no supporting studies, no analyses of growth and no studies on the impact of the proposed cover. (105)

136. COMMENT: The rules are not based on any environmental assessment or on projected growth. For example, if the Cape May County Water Quality Management Plan is amended to greatly increase the sewer service area in Middle township, it is likely the Coastal Planning Area will be changed from the Coastal Fringe Planning Area to the Coastal Suburban Planning Area. This rule allows for too much growth with no basis for it. (112)

137. COMMENT: The summary states that “the same amount of residential and commercial developments would result from typical sprawl development is expected to be accommodated in a concentrated development pattern.” There is no evidence that the Department has done any analysis to support this claim. To make a determination that there will be no change in the amount of development the Department would need to first establish the expected amount of future development. The Department has not conducted any growth projections for the CAFRA area. Nor has the Department determined how much growth will be allowed under these proposed regulations. Without such projections there is no way to make any assurance that future growth will be accommodated. (30)

RESPONSE TO COMMENTS 131 THROUGH 137: The rules are not meant to be, or take the place of, a build-out analysis or other growth-accommodation study. Rather, the rules link the coastal regulatory program into a coordinated, comprehensive regional planning process among state, county and municipal governments. The Department believes the rules will better enable local governments to work with the Department to explore different growth scenarios and attendant impacts and costs.

The New Jersey Office of State Planning has developed a growth-accommodation model that can test various scenarios based on preferred population projections and distribution and

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spatial inputs. The model can analyze regional development patterns and quantify costs and impacts such as population distributions, land consumption, infrastructure (roads, sewers, water supply) costs and impacts on schools. The Department intends to work with any interested party and the Office of State Planning to utilize the growth accommodation model and other tools to look at the future of the coast.

The rules respond to 1993 legislative amendments to the CAFRA statute (N.J.S.A. 13:19-17), and furthers CAFRA's mandate to develop compatible land uses in order to preserve the most ecologically sensitive and fragile areas from development by encouraging development in compact growth areas and limiting it in outlying and environmentally sensitive areas. The Department believes that the rules are closely coordinated with the policies of the State Plan. The rules are intended to update the Department's planning in the CAFRA area by replacing the coastal growth rating maps, which were initially adopted in 1978 using data from the early 1970s. The Department has used the Resource Planning and Management Map of the State Plan as the basis for its CAFRA Planning Map because it reflects existing conditions, is periodically updated, and, most significantly, is the product of extensive public and local government participation. The comprehensiveness of this planning and mapping process far exceeds what the Department would be able to undertake based on its resources. However, the Department did engage in extensive public outreach and discussions with local governments to develop the CAFRA Planning Map. Moreover, the Department will carefully evaluate any future changes to the map to determine whether they are consistent with the CAFRA statute and the Department's Coastal Zone Management rules before making them a part of the CAFRA Planning Map.

The Department's planning in the CAFRA area has historically relied on broad, regional boundaries to distinguish rural and environmentally sensitive areas from developed and potential growth areas in order to determine appropriate impervious cover and vegetative cover requirements. Similarly, the State Planning Commission established boundaries for Planning Areas, which are large masses of land distinguished by certain overall characteristics such as population density, land use, and environmentally sensitive features. The Department examined the boundaries already drawn by the State Planning Commission, the purposes for which they were established, and the factors that determined how the lines were drawn, and based on its examination, the Department determined that the boundaries were established and drawn to serve the same purposes as the Department's boundaries under the Coastal Zone Management rules for the CAFRA area.

The Department based its decision to rely on the State Plan's Resource Planning and Management Structure on previous analyses conducted in support of the State Development and Redevelopment Plan. In 1988, the State Planning Commission evaluated three broad alternative patterns of growth: a "continuation of trends;" an "urban concentration" scenario restricting growth in rural areas and redirecting growth toward urban areas; and a "corridor and nodes" scenario which would limit sprawl outside existing urban areas by concentrating growth into high intensity, mixed-use centers in the major development corridors where development pressures are strongest.

The Commission concluded that the preferred vision was an extension of the corridors and centers scenario that enhances opportunities for growth in urban areas. The Plan needed to revitalize the urban areas with incentives in those areas, not by restricting growth in rural areas. Controlling sprawl in suburban and rural areas must be achieved by restructuring the pattern of

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growth in New Jersey away from sprawl toward a system of compact “centers.” A rural development strategy that organizes future rural growth primarily around existing settlement patterns would reduce development pressures on agricultural and environmentally sensitive lands.

This vision was tested in a detailed analysis of alternative growth patterns prior to adoption of the State Plan as required by the State Planning Act. This analysis, the Impact Assessment of the New Jersey Interim State Development and Redevelopment Plan, was performed by the Center for Urban Policy Research at Rutgers University in 1992. Two growth scenarios were compared: “TREND,” a continuation of current development traditions in the absence of the State Plan and “IPLAN,” based on implementation of the State Plan’s strategies and policies. Beginning with statewide projections of population and economic growth, the analysis addressed such questions as:

- Would both development scenarios accommodate development?
- Would both be good for the State economically and fiscally?
- Which would consume less land for development, and which would consume less frail and/or agricultural land?
- Which would have the better impact on air and water quality?
- Which would cause the fewest roads, water and sewer lines, and other public facilities to be constructed?
- Which would contribute to a superior quality of community life for New Jerseyans?
- Which would contribute more to coordinated and productive activities in land use?

Based on a quantitative analysis of the economic, environmental, infrastructure, community life and intergovernmental coordination implications of the State Plan, the research team concluded the Interim Plan would bring benefits to New Jersey and its citizens that traditional development would not. After the State Planning Commission approved an Amended Interim State Plan incorporating maps and other changes, a supplemental impact assessment study found that the Amended Interim State Plan would be even more beneficial to the State than the Interim Plan:

- Jobs and housing would be located where they are most needed in the State and where they can develop and be publicly serviced with more efficiency.
- 175,000 acres of land, including 42,000 acres of agricultural lands and 30,000 acres of frail environmental lands, would be saved while accommodating the same level of development as would be the case for traditional development.
- Water quality would be improved and minor but positive effects on air quality will occur.
- \$1.44 billion would be saved in infrastructure costs.
- Housing affordability would increase due to the availability of higher density housing in Centers.
- Quality of community life indices would generally increase.
- Intergovernmental coordination would improve among municipalities, counties and State agencies dealing in land use matters.

It is this same land classification, or management structure that the Department is using as the basis for the rules and the CAFRA Planning Map.

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The State Planning Commission also conducted an infrastructure assessment, which included the coastal zone, as part its analysis of growth patterns,

As part of the current State Plan update and revision, an impact assessment and infrastructure assessment will again be conducted on the 1999 Interim State Plan, including the coastal zone of the state.

Because the rules will be closely coordinated with the State Plan, and support a comprehensive coastal planning process, the rules should enable the Department to closely monitor and address in cooperation with local governments, various impacts and effects of coastal growth and development.

138. COMMENT: The State Planning Commission incorporates a municipal plan endorsement process, which, among other things, functions to relate centers to environs. The proposal provides no mechanism to serve this function. (119)

RESPONSE: Delineation of coastal centers is for the permitting of CAFRA-regulated development. The Department expects that municipalities will continue to examine the delineations in relation to their own planning efforts and development and redevelopment issues, and in many cases, seek a different community development boundary and formal center designation by the State Planning Commission. This is a cooperative, comprehensive process in which the Department and other state agencies play an active role. It is during this planning process that the function, linkages and relationship of and between centers within a region is discussed. This process also explores the relationship between centers and their environs. The Department will continue to be an active participant in this process.

Chapter 7. Coastal Permit Program Rules

Subchapter 1. General Provisions

N.J.A.C. 7:7-1.10 Construction and relaxation of procedures or standards

139. COMMENT: The procedure for proving extraordinary hardship is almost impossible to meet. This procedure should not be required for minor waivers of the standards. For minor waivers, the Municipal Land Use Law variance criteria should be followed. (85)

140. COMMENT: The requirements for establishing that an extraordinary hardship exists and the procedure for obtaining a waiver are too restrictive. A procedure similar to that used in the Municipal Land Use Law (40:55D-70c) should be used. (30)

141. COMMENT: The proposed language only allows the granting of a waiver if the applicant can demonstrate a hardship. Such a hardship would not exist if a “minimal beneficial use” of the property exists. Accordingly, a waiver from strict compliance with the proposed Atlantic City rule (N.J.A.C. 7:7E-3.49), specifically the provisions for development on the ocean piers could not be granted as long as a minimum beneficial use of the property existed. Such a standard is

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extraordinary and unwarranted since it does a disservice to both the pier developer and Department because of its severe limitation on decision making. (90)

142. COMMENT: The Department should look at the Municipal Land Use Law's variance procedure, where an applicant seeking a variance is required to demonstrate that "negative and positive criteria" have been met. Under this approach, the Department would have the ability to balance the equities involved. (90)

143. COMMENT: The proposed waiver presents a standard that cannot be satisfied in most cases. It appears that the purpose of this regulation is to provide the Department with a means to address a "takings" challenge rather than provide a real means for the relaxation of a regulation when it is warranted. In many instances, the proposed Atlantic City rule (N.J.A.C. 7:7E-3.49) prohibits development or prescribes rigid design limitations in an effort to provide predictability to the extent that the prescribed design standards are appropriate. Under these circumstances it is of critical importance that a meaningful variance procedure be provided. Proposed N.J.A.C. 7:7-1.10 should be revised to provide a variance procedure similar to that utilized by planning and zoning boards. Variances should be granted to prevent hardship or when the grant of a variance will not have a material impact upon an underlying environmental policy. (100)

144. COMMENT: The waiver procedure is merely a device to protect the Department from a "takings" and does not provide for sufficient regulatory flexibility. The regulation should be modified to create a mechanism similar to that in the Municipal Land Use Law, in which variances can be granted if there is demonstration of (1) overall benefits outweighing detriments and (2) the purposes of zoning and the municipality's master plan being enhanced. (101)

145. COMMENT: This rule all but prevents the Department from relaxing any of its substantive procedures and does not provide enough flexibility. The rule should be modified to provide a variance procedure similar to that under the MLUL. Variances should be granted when the granting of such a waiver will not have a substantial impact upon underlying policies for any given regulation, and where there is a benefit to the public by the grant of the variance or where the failure to grant the variance would result in a substantial hardship to the applicant. (45)

RESPONSE TO COMMENTS 139 THROUGH 145: The purposes of the Municipal Land Use Law and the CAFRA statutes differ, and nearly all of the Coastal Zone Management rules in N.J.A.C. 7:7E already allow flexibility and provide balancing of environmental and other concerns. Accordingly, a variance standard different from that in the Municipal Land Use Law is appropriate under these rules.

The CAFRA statute is more narrow in scope than the Municipal Land Use Law. First, CAFRA applies only to the coastal area of the State. Second, CAFRA was enacted to protect the "bays, harbors, sounds, wetlands, inlets...estuaries, barrier beaches, near shore waters and intertidal areas" because they together constituted a unique and "delicately balanced physical, chemical and biologically acting and interacting natural environmental resource" that was suffering "serious adverse environmental effects" from development (N.J.S.A. 13:19-2). The

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intent of the Act was to encourage the “development of compatible land uses... within the framework of a comprehensive environmental design strategy” preserving the “most ecologically sensitive and fragile area from inappropriate development” and providing “adequate environmental safeguards for the construction of any developments in the coastal area” (N.J.S.A. 13:19-2). The statutory grounds for the issuance of a CAFRA permit require that a development result in only “minimal” adverse environmental impacts (N.J.S.A.13:19-10).

The Department believes that N.J.A.C. 7:7-1.10 provides sufficient flexibility for applicants without sacrificing protection of the special environmental resources which CAFRA was intended to provide. The procedure for requesting a relaxation of standards is not intended to function like a variance under the Municipal Land Use Law, but rather to allow a property owner to realize minimum beneficial use of his or her property as a whole in accordance with constitutional standards. The standards for Municipal Land Use Law variances are usually much broader. For example, one of the standards for the granting of a “c” variance is if the purposes of the Municipal Land Use Law would be advanced by a “deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment” (N.J.S.A. 40:55D-70(c)(2)). Also, it should be noted that, unlike the Municipal Land Use Law, the CAFRA statute itself does not specifically establish a variance standard. Therefore, the Department is adopting this rule enabling the relaxation of the substantive Coastal Zone Management rules based on constitutional standards.

N.J.A.C. 7:7-1.10 is not meant to address every situation in which a property owner is prevented or restricted from developing the property in the way or to the degree the owner would prefer because of CAFRA and these implementing regulations--it is designed primarily to prevent a “taking” of the property, by providing a property use to avoid extraordinary hardship. In nearly every instance, the Coastal Zone Management rules allow some development of a site and relaxation of the standards is not necessary in order to afford a property a use. In almost every case, a site will contain both developable land and environmentally sensitive areas where development should not occur. This rule is intended for those very rare instances where relaxation of the standards is required to enable a use of property. The Department’s experience in administering the coastal permitting program indicates these instances generally are limited to cases where an entire site is environmentally sensitive. This rule was crafted to promote CAFRA’s goal of minimizing intrusion in these environmentally sensitive areas while providing a way to enable the use of an environmentally constrained site.

146. COMMENT: Proposed N.J.A.C. 7:7-1.10 allows for the relaxation of standards for cases of “extraordinary hardship” where a property owner is prevented from realizing a beneficial use of his or her property,” but there is no definition of terms. What is extraordinary hardship and minimum beneficial use? Given the enormous benefits that a landowner could gain by avoiding the strict application of the rules, the rules should set out clearly what standards a landowner must meet to gain the flexibility. (32)

147.COMMENT: There is no guidance as to what “minimum beneficial use” is, as opposed to minimum speculative use. (5)

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148. COMMENT: A definition of minimum beneficial use is needed. Does minimum beneficial use” mean an owner has to lose money, break even, or make some profit? What if adjacent landowners or conservation groups offer to buy the land at an unprofitable price? Who determines what a reasonable price is or fair market value? (85)

149. COMMENT: There needs to be a definition of minimum beneficial use (7:7-1.10(c)1). It is too subjective. (30)

RESPONSE TO COMMENTS 146 THROUGH 149: N.J.A.C. 7:7-1.10(c) allows the Department to relax any of the substantive standards in N.J.A.C. 7:7E “when their strict application would result in an extraordinary hardship.” N.J.A.C. 7:7-1.10(c)1 through 7 explain what constitutes an extraordinary hardship. To demonstrate an extraordinary hardship, N.J.A.C. 7:7-1.10 (c)1 requires that an applicant must show that the strict application of the standards in N.J.A.C. 7:7E would prevent a minimum beneficial use of the property as a whole in accordance with constitutional standards. The extraordinary hardship cannot result from an action or inaction of the property owner, and the provision defines “property as a whole.” The subsequent paragraphs in subsection (c) list additional criteria that must be met for an “extraordinary hardship” to be found, including that no reasonable offer to purchase the property is received after the property is offered for sale to various entities (N.J.A.C. 7:7-1.10(e)4). To qualify for relaxation of the standards of N.J.A.C. 7:7E, the proposed use must be the “minimum relief necessary” to enable the minimum beneficial use (N.J.A.C. 7:7-1.10(c)6). Minimum beneficial use is that use the realization of which ensures that there is no “regulatory taking” of property in accordance with constitutional standards.

The rule does not define “minimum beneficial use” more precisely because the situations intended to be addressed by this provision are fact-sensitive and must be evaluated on a case-by-case basis. The rule reflects legal precedent and judicially established standards on this issue. Under existing takings jurisprudence, a “minimum beneficial use consistent with constitutional standards” can exist whether or not a profit is realized from developing the property. Under the rule, the property must be appraised assuming “a minimal beneficial use” exists. An offer to buy at this appraised value would be considered “reasonable.”

The Department also notes that, like any other final permit decision, the Department’s determination under N.J.A.C. 7:7-1.10 would be subject to the administrative hearing process and then judicial review.

150. COMMENT: Both the proposed rule text at N.J.A.C. 7:7-1.10 and accompanying summary fail to deal with hardship waiver applications that preclude actions of predecessor or subsequent property owners. Under this proposal, the relaxation of permit requirements is restricted only to a demonstration that the rules would deny a property owner from realizing a minimal beneficial use of his or her property if it can be demonstrated that this does not result from an action or inaction of that property owner. This provision would allow a property to change hands before the application of the minimum beneficial use test. If that “new” lot does not meet the beneficial use test, regulations will be relaxed. This language should be amended to read as follows: “Are not the result of any action or inaction by the applicant, the owner or any predecessor in title including any transfer of any contiguous lands which were in common ownership on or after the

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effective date of the adoption of the Coastal Facilities Review Act (or some other appropriate date) or the refusal on or after such date of the applicant or any predecessor in title to either sell the subject property for its fair market value at the time the offer was made or to buy a contiguous parcel for its fair market value at the time the offer was made.” (5)

RESPONSE: The extraordinary hardship standard in the rule would be applied in order to avoid a “regulatory taking,” that is, a governmental action—in this case, the strict application of the Coastal Zone Management rules—which deprives a person of property without just compensation. The rule applies to the current owner’s “property as a whole” in order to prevent that owner from, for example, obtaining a large property, developing and/or selling a portion of it, and then claiming a hardship because environmental constraints on the remaining portion preclude its development. The “property as a whole” can include previously sold or developed land in those instances where the land was part of a larger property assembled as one investment or to further one development plan. The Department has not adopted the language suggested by the commenter, because it does not believe an “extraordinary hardship” should be found on the basis of action or inaction taken before the property owner acquired the property. However, the Department has added language on adoption specifying that the extraordinary hardship cannot be the result of any action or inaction of the property owner or “an entity controlled by the property owner.” In addition, the Department notes that some of the actions mentioned by the commenter, such as transferring land previously in common ownership, may be considered action of the property owner causing the claimed hardship. The knowing purchase of environmentally sensitive, regulated land might also be considered an action of the property owner causing the claimed hardship.

151. COMMENT: The language of the waiver should be taken verbatim from the Pinelands regulations. These regulations provide procedures for waiver applications and language to provide communities with arguments for denials, eliminating some of the takings fear created by planning regulations. (10, 52)

RESPONSE: The Pinelands Commission’s rules at N.J.A.C. 7:50-4.61 through 4.66 allow a waiver of strict compliance from the provisions of the Pinelands Comprehensive Management Plan (CMP). Similarities between the Pinelands waiver and N.J.A.C. 7:7-1.10 include that they are designed “to provide property owners with at least a minimum beneficial use of their property consistent with constitutional requirements” and that both rules are intended to provide relief where strict compliance will create an extraordinary hardship. Under the Pinelands Protection Act and Comprehensive Management Plan, the Pinelands Commission has one remedy that is not available to the Department, namely, the ability to allocate Pinelands Development Credits (PDC’s) to an applicant as “minimum relief” (7:50-4.61). Also, the CMP was specifically designed to provide all properties with a use, whether residential, agricultural or for forestry. The CAFRA rules were not designed to ensure this same result. The Department has not adopted the precise language of the Pinelands rule because of the differences between the CAFRA statute and the Pinelands Protection Act. After some experience implementing this new rule, the Department will be better able to evaluate the appropriateness of changes to it.

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152. COMMENT: The definition of “property as a whole” is inconsistent with existing case law and should be changed. The broad interpretation will serve to further limit the application of relief language. (30)

153. COMMENT: The rule defines “property as a whole” expansively to include “all property that was assembled as one investment or to further one development plan, and may include more than one municipal tax lot.” Also, the term includes “lots that were previously sold or developed, if those lots were part of one investment or one development Plan.” This is an unduly broad reading of the concept of the “property as a whole”, as outlined by the courts in the Loveladies, East Cape May and other decisions. For example, property sold prior to the effective date of CAFRA cannot constitutionally be included in any such analysis. Even property sold after CAFRA became effective cannot be included if the use presently prohibited was previously allowed. The definition does not address contiguity; thus past sale of a non-contiguous lot could, under this proposal, bar a hardship due to a taking. The definition of property as a whole in these rules is too broad and too vague, and is subject to staff interpretation, to pass constitutional muster. (57)

RESPONSE TO COMMENTS 152 AND 153: N.J.A.C. 7:7-1.10 provides that the “property as a whole” may include more than one municipal tax lot, and may include lots previously sold or developed if the property was assembled as one investment or to further one development plan. This is consistent with the factors listed in cases such as Ciampitti v. U.S., 22 Cl.Ct. 310 (1997), which also recognize that under the same circumstances, a “property as a whole” could include non-contiguous lots. The East Cape May decision, 300 N.J. Super. 325 (App. Div. 1997), recognized that the “property as a whole” is determined on a fact-specific, case-by-case basis. N.J.A.C. 7:7-1.10 is intended to allow the Department to employ this approach. If the courts subsequently adopt a specific standard on the “property as a whole” issue, the Department will adhere to it. Thus, this regulation is meant to reflect existing case law on this issue, and to afford the Department the ability to tailor its decision-making to the judicially determined standards that apply in takings cases.

154. COMMENT: At N.J.A.C. 7:7-1.10(d)2 the 10 days allowed for submittal of a request for a waiver is too short for the requirements in N.J.A.C. 7:7-1.10(e). These requirements include documentation that the property has been offered for sale to all owners of real property within 200 feet and to land conservancies and environmental organizations. Further, the submittal must document that no reasonable offer was received. The offer of sale must be open for 180 days. The rule should clarify how this can be accomplished in a 10-day timeframe. (30)

RESPONSE: An applicant who wishes to request a relaxation of the Coastal Zone Management standards after the Department makes its decision on the permit must submit the request within the timeframe contained in N.J.A.C. 7:7-5.1(a), that is, within 10 days of publication of the permit decision in the DEP Bulletin. The applicant must present various types of documentation, including documentation that the property has been offered for sale, and that no reasonable offer to purchase has been received. The offer of sale must indicate that it is open for a period of at least 180 calendar days. The Department has clarified the rule on adoption to provide that the

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applicant must send, within 10 days of publication of the Department's permit decision in the DEP Bulletin, proof to Department that it has offered the property for sale in the manner prescribed. The offer must remain open for 180 days and Department cannot make a determination of hardship until after that 180 day period has passed. The rule has also been modified on adoption to clarify the applicant must submit copies of any responses to the offer of sale received within this 180 day time frame. Because of these timeframes, it might prove advantageous for an applicant to submit its request for a relaxation of the Coastal Zone Management standards at the time of initial permit application.

155. COMMENT: Proposed N.J.A.C. 7:7-1.10 is too rigid, both procedurally and substantively and is likely to provide no relief. (57)

RESPONSE: The process for applicants to request a relaxation of the Coastal Zone Management standards is intended for those property owners who may suffer the "extraordinary hardship" of not being able to realize a "minimum beneficial use" of their property. It is not intended to address the inconvenience or minor reduction in property values resulting from compliance with the Coastal Zone Management rules. The requirements and proofs to meet the test may be demanding, but the relief that may be granted is meant to be an exception, which applies only to a small percentage of all CAFRA permit applicants. As stated in response to comments 139 through 145, the Department anticipates, based on experience, that the process only will be used where an entire site is comprised of the environmentally sensitive special areas CAFRA was enacted to protect. Therefore, the Department believes the rule will provide relief in appropriate circumstances.

156. COMMENT: The provision goes beyond what the courts have required to demonstrate a taking, and is therefore unconstitutional. (57)

RESPONSE: N.J.A.C. 7:7-1.10 is meant to reflect and adhere to judicially established standards in regulatory takings cases. For this reason, the rule refers to a minimum beneficial use "consistent with constitutional standards." The rule also includes criteria that must be met in order to minimize adverse environmental impacts, as required by CAFRA.

157. COMMENT: The provision at proposed N.J.A.C. 7:7-1.10(e)4, should be amended to include that the offer of sale of property should be extended to the governing bodies of the municipality and county in which the property is located, as well as to neighbors, land conservancies and environmental organizations. (114)

RESPONSE: The Department agrees that county and municipal governing bodies, county and municipal park systems and municipal environmental commissions are appropriate to include on the list of entities to which a property must be offered for sale. The Department has modified the rule on adoption to require that the offer of sale of property be extended to land conservancies and environmental organizations and governmental agencies on a list supplied by the Department. This will also conform the adopted rule to the Department's current practice in settling takings claims brought in court or in the Office of Administrative Law.

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158. COMMENT: The proposed rule does not address the issue of proper compensation for people whose rights have been diminished or removed. (113)

RESPONSE: N.J.A.C. 7:7-1.10 is intended to enable property owners to realize a minimum beneficial use of their property in accordance with constitutional standards on a site-by-site basis. Compensation would only be required if this standard were not met. Persons who request a relaxation of the Coastal Zone Management rules under N.J.A.C. 7:7-1.10 and are aggrieved by the Department's decision can contest the decision in the Office of Administrative Law or bring a takings claim in court.

159. COMMENT: The rule as proposed does not address the economic impacts involving reasonable development expectations and does not mitigate for such impacts. (16)

RESPONSE: Whether a regulation interferes with reasonable investment backed expectations is one of the relevant factors in takings analysis. (Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978)). Governmental actions which diminish a property's marketability or foreclose previously anticipated but unrealized profits do not constitute takings per se. Rather, the courts examine other factors such as the character of the governmental actions, the existence of reasonable investment backed expectations, and the economic impact of the governmental action to decide takings cases, and have held that a taking occurs if a property is deprived of substantially all use. N.J.A.C. 7:7-1.10 provides that an applicant must document its costs to acquire and maintain its property so that the Department will be able to consider reasonable investment backed expectations in its review.

160. COMMENT: The requirement imposed on the applicant, as part of the waiver regulation is expensive and onerous. The applicant is required to obtain and pay for an appraisal, and then offer the land for sale to individuals and groups identified by the Department. This can result in a time consuming and arbitrary process. The Department should be required to pay fair market value to landowners who are denied CAFRA permits and have no remaining use of their land, since that is what the Fifth Amendment to the Constitution requires. (57)

RESPONSE: N.J.A.C. 7:7-1.10 is intended to allow some use the property land and hence avoid a "regulatory taking" of property without compensation. Since nearly all CAFRA sites are developed for some use through the normal CAFRA permitting process, this rule will come into play only in those rare instances where an entire site contains sensitive areas that should be disturbed as little as possible. The requirement to offer the property for sale ensures that the alternative of selling these environmentally sensitive sites to buyers willing to preserve them can be explored before allowing some development of them instead.

Subchapter 9. Sector Permit

N.J.A.C. 7:7-9.1 Purpose and Scope

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161. COMMENT: The Department can turn down a Sector Permit application for any number of reasons, and all town ordinances and variances for any type of development anywhere in town have to go through the Department. (105)

RESPONSE: The Department has established a process for municipalities to apply for certification as a Sector Permit municipality at N.J.A.C. 7:7-9.4. That rule provides at (e) the standards which will be used to determine whether a municipality qualifies for certification as a Sector Permit municipality. The Department anticipates that this process will involve significant coordination between the Department and the municipality seeking certification as a Sector Permit municipality. The application for Sector Permit certification must include copies of all municipal development ordinances which will be reviewed by the Department to ensure that local plans and ordinances are as protective of coastal resources as the Coastal Zone Management rules. Since the Sector Permit will ultimately allow development within a sector to undergo simultaneous municipal and Departmental review, the Department needs to maintain authority to review municipal ordinances and variances to ensure their consistency with CAFRA and the Coastal Zone Management rules. Otherwise, this simultaneous review process will be unworkable.

162. COMMENT: The Sector Permit is totally unworkable and too expensive. No town is likely to subject its local legislative process to the Department oversight and scrutiny. A town must map all wetlands, buffers and other special areas at its own expense, and Department is offering no financial assistance. Every project would have to go through a local Planning Board, even if such approval is not now required under the Municipal Land Use Law. Any variances would make a project ineligible, because an applicant would have to then apply for a CAFRA permit. The idea is good but has to be reworked. (57)

163. COMMENT: Sector Permit requirements are so detailed and convoluted that few will participate. The time and expense of preparing the application and getting multi-agency signoffs will be discouraging. It imposes a system where the Department looks over a municipality's shoulder. If a development requires a variance the Department would have to approve. The benefits of the process to a municipality or applicant are unlikely to outweigh the costs and negatives. (85)

164. COMMENT: There is no benefit for a community to apply for certification as a Sector Permit municipality because of the exhaustive, detailed and arbitrary judging process to ensure consistency with the Coastal Zone Management rules. No money is provided for field identification of special areas and the information requirements are voluminous. (105)

165. COMMENT: Obtaining a Sector Permit will stretch the limit of local government resources. Even if the local government were authorized as a Sector Permit municipality, it is onerous, has little to do with local land use laws, and the Department still makes all the decisions. (12)

166. COMMENT: The Sector Permit process is a step in the right direction but is so tightly

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controlled by the Department that it may not be worth the municipal effort required to achieve certification. Experience with Long Branch might suggest that such extensive Department oversight is not needed. Nonetheless, the delegation of the permit process could potentially cut the permitting process by several months, especially for public works projects. (99)

167. COMMENT: The submittal requirements, such as mapping of special areas and demonstration of ordinance consistency with the Coastal Zone Management rules, for certification as a Sector Permit municipality are so onerous and costly, they will preclude municipalities from applying. (30)

RESPONSE TO COMMENTS 162 THROUGH 167: Although the process for obtaining Sector Permit certification will require a substantial amount of work by a municipality, the Department believes that this is necessary to ensure coastal resource protection under municipal land use ordinances that is comparable to that which is provided under in the Coastal Zone Management rules. In addition, the CAFRA legislation makes the Department responsible for approving larger developments in the coastal zone, pursuant to a comprehensive strategy. Therefore, the Sector Permit rules contain provisions to ensure this responsibility will continue to be met after a municipality obtains certification. The process described in Subchapter 9 is detailed, but should not be difficult. Municipalities that maintain current master plans and development and resource protection ordinances should be able to successfully participate in the process. The Department's review of municipal ordinances will not be subject to arbitrary standards. Rather, the Department will determine whether the local ordinances meet a threshold of resource protection equal to the Department's rules.

The Department acknowledges that there will be a cost for municipalities to obtain certification as a Sector Permit municipality. The cost for such an application will depend on the size and nature of the municipality and the proposed sector. As part of the Department's Federally approved coastal management program, funding through local coastal grants has been provided each year since October 1996 to coastal counties and municipalities to assist in their efforts to make local master plans and associated ordinances consistent with CAFRA policies, and thus with the requirements of this rule. These grants were made available again in 1999, and a total of \$250,000 is available to coastal municipalities to help with the cost of obtaining Sector Permit certification. It should also be noted that, on adoption, the Department has eliminated the requirements at N.J.A.C. 7:7-9.4(b)7iv, v and vi for the municipalities to submit letters from various Departmental agencies regarding municipal ordinance conformance with the Coastal Zone Management rules on endangered and threatened species habitats and historic and archaeological resources. This municipal ordinance review will be conducted by the Department as part of its review of each application process for certification. This change further reduces the burden placed on a municipality seeking certification as a sector permit municipality.

While municipal participation in the Sector Permitting process is voluntary and not mandated, the sector permit will benefit the municipalities by providing a more streamlined review process for CAFRA-regulated development at the local level. Based on the Department's experience implementing the Long Branch Redevelopment permit, the requirements of the sector permit process are not excessive.

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The Sector Permit does not require all projects to go to a local planning board. Projects which do not go to the planning board and are CAFRA regulated are not required to go to the planning board in a Sector Permit Municipality. They are instead required to submit a CAFRA general or individual permit application to the Department, unless they qualify for a permit by rule. Typically, the type of projects that do not go to the municipal planning board and are CAFRA regulated are individual single family homes within 150 feet of the mean high water line, or the landward limit of a beach or dune. The development of an individual single family home is always reviewed through either the CAFRA general permit process, with a review time averaging less than 60 days and minimal (\$250) application fee, or the CAFRA permit by rule process, with no application filed with the Department. Public projects, which also do not go through the planning board, are already covered by the sector permit process. The rule does not require an applicant whose project receives a variance to apply for a CAFRA permit. Rather, the rule establishes a process at N.J.A.C. 7:7-9.3(a)2i wherein the Department would review a variance or waiver granted by the municipal planning board. If the Department determines that notwithstanding the waiver or variance, the development in the sector will continue to comply individually and collectively with the Coastal Zone Management rules, the Department will concur with the waiver and the development could be authorized under the Sector Permit.

168. COMMENT: Sector Permits have a lot of potential to help communities. The Wildwoods Regional Center Committee is preparing to apply for a Sector Permit. (104)

RESPONSE: The Department acknowledges this comment in support of the rule, and believes that the Sector Permit for municipalities will provide a simplified permit application and an abbreviated review process to encourage and facilitate development in any CAFRA center.

169. COMMENT: Will CAFRA Sector Permits expire 5 years after the date of issuance, as do other CAFRA permits pursuant to N.J.A.C. 7:7-1.5(d)? (64)

RESPONSE: The Sector Permit is a rule and therefore subject to the readoption process under Executive Order 66(1978). The adopted Sector Permit rule does not address the expiration of certifications to individual municipalities. However, the concurrent proposal in this New Jersey Register would establish a five-year expiration for municipal certifications and sets forth a procedure for the review and re-certification of Sector Permit municipalities prior to the expiration of each certification.

170. COMMENT: Once a community receives certification as a Sector Permit municipality, the responsibilities of the planning and zoning boards are essentially reduced to certifying that the voluminous CAFRA rules have been carried out, checked and double-checked. The Sector Permit rule imposes excessive standards on Sector Permit municipalities, including reporting of variances, consideration of ordinance changes and possible revocation of Sector Permit certification for failure to comply. (40)

RESPONSE: The adopted rule is a part of the Department's efforts to build partnerships with coastal county and municipal governments in the formulation of coastal planning and

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development decisions and to make these decisions consistent at various levels of government. The Sector Permit will strengthen local planning efforts and does not remove the role of local government in development approvals. The Sector Permit process is strictly voluntary and is intended to result in streamlined, coordinated development review at the municipal and state levels. CAFRA legislation requires state review and approval of larger developments. Therefore the up-front review by the Department of ordinances is necessary to ensure that applications reviewed under the ordinances also will meet State CAFRA standards.

171. COMMENT: The Department must develop an easier process that fosters trust between the Department and the municipality, or there will be limited participation. (6)

RESPONSE: This rule is a part of the Department's efforts to build partnerships with coastal county and municipal governments in the formulation of coastal planning and development decisions. The process described in Subchapter 9 is detailed, but should not be difficult. Municipalities that maintain current master plans and development and resource protection ordinances should be able to successfully participate in the process. Establishing the Sector Permit process will allow for a more streamlined review process for CAFRA-regulated development at the municipal level, and thus should foster trust between levels of government. In addition, the Department is willing to consider specific suggestions for improving this process over time.

172. COMMENT: The Sector Permit will not work because the Department does not work with municipalities in partnership. The proposal has no supporting studies, no growth projection, no analyses of how much growth can be accommodated, no correlation of impervious cover limits to either growth capability or desirability, no quantitative studies relating impervious to water quality or environmental quality, no analyses of the economic impact to the rules on county and local governments, but other than that it is fine. It should be replaced with a true partner process. (105)

RESPONSE: The Sector Permit at N.J.A.C. 7:7-9 was developed based on the Department's experience to date implementing the Long Branch Redevelopment Zone permit at N.J.A.C. 7:7-7.5. The Sector Permit is intended to provide a mechanism for streamlined CAFRA permit review, not to alter the Department's regulatory jurisdiction or substantive standards used to make permit decisions. The Sector Permit process is not mandatory, but rather is an option available to coastal municipalities seeking to facilitate and streamline the approval of CAFRA-regulated development in those communities.

173. COMMENT: Although the Sector Permit is available to Coastal Metropolitan and Coastal Suburban Planning Area municipalities, specifically cores and nodes within those municipalities, these municipalities did not have an opportunity to designate cores or nodes during the CAFRA mapping process. The proposed rule does not include a procedure for Department to map any new cores or nodes. It seems that the only way to designate new ones is through the State Planning Commission, but the concept of cores and nodes may not be included in the Final State Development and Redevelopment Plan. Even if they are included, there is no process for

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designation specified at this time. The commenter recommends that Sector Permits be available throughout the coastal metropolitan and suburban planning areas. If this cannot be done, then the Department should devise a process for amending the CAFRA map to allow for new cores and nodes in these Coastal Planning Areas. (98)

174. COMMENT: The proposed rule does not designate any CAFRA centers in the Coastal Metropolitan Planning Area. It is a burden to require these municipalities to go through the formal center designation process in order to qualify as a municipality eligible to apply for a Sector Permit. Municipalities completely within the Coastal Metropolitan Planning Area should be exempt from having a formal center designation. (79)

175. COMMENT: The Sector Permit should be available to all municipalities within the Coastal Metropolitan and Suburban Planning Areas, not just to those with CAFRA centers, cores and nodes. (30)

176. COMMENT: What is the rationale for not allowing Sector Permits in all centers (CAFRA and coastal) in all planning areas? Although the Sector Permit is available to metropolitan and suburban planning area municipalities, specifically cores and nodes within those municipalities, there are currently no cores or nodes in the CAFRA area. This limits the scope of areas where the Department wants to encourage growth and streamline the permitting process. To have a real impact, the process must be broadly available. (30)

RESPONSE TO COMMENTS 173 THROUGH 176: N.J.A.C. 7:7-9.1(a) provides that the Sector Permit is available for CAFRA-regulated development in a certified Sector Permit municipality having a CAFRA center in any Coastal Planning Area, or in a CAFRA core, or a CAFRA node located in the Coastal Metropolitan Planning Area or the Coastal Suburban Planning Area.

The Department believes that the coordinated, comprehensive planning process that accompanies center designation or plan endorsement by the State Planning Commission is essential for those municipalities considering applying for certification as a Sector Permit municipality.

The State Planning Commission continues to process and designate numerous center petitions that have been received during the cross-acceptance process, including the coastal Monmouth County municipalities of Atlantic Highlands, Neptune Township and Manasquan, and the Ocean County municipalities of Dover Township, Ocean Township, Lacey Township, Eagleswood Township, Little Egg Harbor Township and Tuckerton. In addition, the Commission has agreed to accept petitions from the Atlantic County coastal municipalities of Absecon, Egg Harbor Township, Longport, Margate, Pleasantville and Ventnor. The Commission is currently developing a more refined process for endorsing county and municipal plans. Because the Commission has determined that the existing center designation process could be improved to offer a more comprehensive review of local planning and development documents and implementation mechanisms, it is developing a “plan endorsement” process that considers a wider range of planning and development issues. See the discussion in the Statewide Policies: Comprehensive Planning section of the State Development and Redevelopment Plan: Interim

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Plan, March 31, 1999 (pages 85-87). Under the new process, centers would be delineated and endorsed, or designated, as part of a larger plan. As in the current center designation process, the Department will be an active participant in the plan endorsement process. Once the Department gains experience in implementing the sector permit in the formally reviewed CAFRA center municipalities, the Department will consider expanding the sector permit further.

177. COMMENT: Does the entire sector need be located within the boundary of a coastal center, or can a proposed sector extend beyond the boundary of the center? (64)

RESPONSE: The sector must be wholly within a CAFRA center. The intent of the Sector Permit is to provide a simplified permit application and an abbreviated review process to encourage and facilitate development in municipalities that have participated in the center planning and designation process. The center designation implies that there is an agreed-on community development boundary within which development will be encouraged. However, the Department recognizes that there may be an advantage to extending the concept of Sector Permitting to the entire municipality and is proposing to extend the scope of the Sector Permit in this fashion, as described in the concurrent proposal elsewhere in this issue of the *New Jersey Register*.

178. COMMENT: The Sector Permit should be available to any coastal municipality, as an additional incentive to promote compact forms of development in the Coastal Fringe, Rural and Environmentally Sensitive Planning Areas. It should not be limited to municipalities with designated CAFRA centers, CAFRA cores and CAFRA nodes. (16)

RESPONSE: The Department limited the Sector Permit rule to municipalities with CAFRA centers, CAFRA cores and CAFRA nodes based on the coordinated, comprehensive planning process that accompanies center designation or plan endorsement by the State Planning Commission. The rule will result in coordinated State and local land use and infrastructure decisions, and timely, predictable processes for public and private projects. The coastal decision-making process will then be more efficient and predictable by clearly establishing where and how development may occur.

179. COMMENT: The Sector Permit should include activities regulated by Waterfront Development, Coastal Wetlands and Freshwater Wetlands/Freshwater Wetlands Transition Area Waivers. This would maintain the intent of permit streamlining. (64)

RESPONSE: The Department will study this issue to determine whether other programs can include further permit streamlining.

N.J.A.C. 7:7-9.3 Sector Permit Standards

180. COMMENT: The Department should only review those variances or waivers that have some relation to coastal policies. These would be the use variances. The rules should be clarified as to which variances or waivers the Department will review. (NJAC 7:7-9.3(a) 2) (30)

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RESPONSE: N.J.A.C. 7:7-9.4(h) provides that the Department's letter of certification for a Sector Permit municipality will specifically list the land use ordinances related to the Coastal Zone Management rules upon which the municipal certification is based. Any variance or waiver to these ordinances will require review and approval by the Department.

181. COMMENT: The rule (NJAC 7:7-9.3(a) 3) fails to specify when construction may commence in the circumstance when the Department publishes notice in the DEP Bulletin of the applicability of the Sector Permit. (30)

RESPONSE: In accordance with N.J.A.C. 7:7-9.3(a)3, construction of the development, including site preparation, shall not begin until either 45 days after the Department receives the final planning board approval, or for public developments proposed by the municipal governing body, 90 days after the Department receives notice that a development within the sector is under consideration, whichever is applicable, unless the Department first publishes notice in the DEP Bulletin that authorization under the Sector Permit is applicable. The rule has been clarified upon adoption to state that construction may commence immediately after the Department publishes notice in the DEP Bulletin that the Sector Permit is applicable.

182. COMMENT: In N.J.A.C. 7:7-9.3, there is a reference to N.J.A.C. 7:7-9.8(a). There is no such section. (30)

RESPONSE: The Department has corrected the cross-reference to N.J.A.C. 7:7-9.8 upon adoption.

183. COMMENT: N.J.A.C. 7:7-9.3(a) and 7:7-9.5(e) delay the start of site preparation and foundation work. Delays of 45 to 90 days are devastating to Atlantic City projects with tight construction schedules. It is recommended that owners be allowed to proceed at their own risk and peril. (48)

RESPONSE: The Department believes that the 45 day period for reviewing a project approved by the municipal planning board is a reasonable amount of time since CAFRA and municipal review will occur simultaneously under the Sector Permit process. This time period runs concurrently with the 35 day period in which the municipality must notify the Department of any legal challenges to the approval. In addition, a municipal or Departmental approval is subject to challenge within 45 days. Projects that proceed at their own risk and are subsequently found to be in non-compliance may be difficult to remove or correct.

N.J.A.C. 7:7-9.4 Requirements for Certification as a Sector Permit Municipality

184. COMMENT: The Pinelands Commission endorses the concept of sector permitting. Under the Pinelands conformance process, the Pinelands Commission certifies entire municipalities, not portions of municipalities. The Commission supports partial certification of a municipality as long as the provisions requiring Pineland Commission review and approval (see N.J.A.C. 7:7-9.4(b)7vii), and compliance of all development in the CAFRA area (outside the

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sector) with the Coastal Zone Management rules (see N.J.A.C. 7:7-9.4(e)1) remain in the rules. (53)

RESPONSE: The Department is retaining the provisions in the rule for Pinelands Commission review and approval. The Department also agrees that there would be an advantage to allowing the Sector Permit to be used in the entire municipality, since to qualify for the sector permit, a municipality must ensure that plans and ordinances throughout the entire land area of the municipality are consistent with the Coastal Zone Management policies and rules, and are equally protective of coastal resources. The Department is proposing to expand the scope of the Sector Permit in the concurrent proposal of amendments to the Coastal Zone Management rules.

185. COMMENT: Please clarify whether a Freshwater Wetland Letter of Interpretation is required for the proposed sector. Requiring this would be unreasonably difficult and/or costly and deter municipalities from seeking Sector Permits. The sector designation is proposed to streamline the CAFRA process. It does not eliminate the requirement of the Freshwater Wetlands Protection Act for any impacts to wetlands or transition areas. Therefore, the LOI requirement is redundant. In addition, Letters of Interpretation are valid for 5 years, with the possibility of one 5-year extension. Is it the Department's intent to require formal Letters of Interpretation-Line Verification for Sector Permit certification? If yes, is it the Department's intent to also require a formal Letter of Interpretation for site specific delineations within the sector for freshwater wetlands or transition area waiver applications? (64)

186. COMMENT: Requiring a Freshwater Wetland Letter of Interpretation would be unreasonably difficult and/or costly and deter municipalities from seeking Sector Permits. This is unnecessary since wetlands mapping is available on GIS and Letters of Interpretation will be required as part of individual development applications. (Roberts, 99)

187. COMMENT: The requirement to obtain letters of interpretation from Department programs will discourage applications. (30)

RESPONSE TO COMMENTS 185 THROUGH 187: Wetland areas are a vital coastal resource serving as habitat for many species. The wetlands also serve as buffers that protect upland areas from the flooding and damage caused by storms. The locations of regulated tidal wetlands are shown on the Department photomaps promulgated pursuant to the Wetlands Act of 1970. New Jersey also protects wetlands under the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B. While the Department's Geographic Information System includes freshwater wetlands map data, this information does not represent the regulatory wetland locations and limits, and therefore cannot be utilized for the purpose of identifying regulated freshwater wetland areas for decision making. However, this Geographic Information System data, rather than a Letter of Interpretation, can be utilized to identify the approximate locations of freshwater wetlands outside of the sector. The Geographic Information System can also be used as a data source for the preliminary identification of freshwater wetlands within the sector. The Department will require a Freshwater Wetland Letter of Interpretation when a municipality is seeking certification as a Sector Permit municipality to identify the location and extent of

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wetlands and associated transition areas within a proposed sector, in order to determine the appropriateness of areas for development and consistency of the municipal ordinances with the Coastal Zone Management rules. The requirement for a municipality to obtain a Letter of Interpretation for the proposed sector will obviate the need for individual Letters of Interpretation for smaller parcels of land within the sector while that Letter of Interpretation remains valid. This will provide significant benefit to those seeking approval of CAFRA-regulated development within the sector. The Letter of Interpretation will enable the municipality to plan for future growth and development in conformance with the requirements of the Freshwater Wetlands Protection Act. The Department recommends that municipalities seek to avoid areas of wetlands, where possible, when locating sectors.

188. COMMENT: The Department should coordinate its own reviews. (N.J.A.C. 7:7-9.4(b)) These internal reviews should have a 20-day limit. If no response is received, the issue should be considered closed. (30)

189. COMMENT: The submittal requirements at N.J.A.C. 7:7-9.4 iv, v, vi and viii for certification as a Sector Permit municipality would only be reasonable if a time limit were part of receipt of the required letters (for example, 20 days) and failure of an agency to respond constituted implied consent. (99)

RESPONSE TO COMMENTS 188 AND 189: The Department has decided to coordinate the various program reviews of Sector Permit applications and has modified the rule on adoption to delete the requirement that municipalities submit letters of ordinance consistency from various agencies within the Department.

190. COMMENT: Time requirements should be added to ensure a timely Department review. The Council on Affordable Housing's rules for obtaining substantive certification could be used as a model. (99)

RESPONSE: The Departmental review pursuant to N.J.A.C. 7:7-9.4 will be conducted in a timely manner. However, there will be many differences in the size and location of sectors, which will affect the overall time of each review. Therefore no time requirement is included.

191. COMMENT: The Sector Permit rule should require the municipal land use ordinances to use clustering provisions and other innovative land use planning techniques in rural areas to conserve land while assuring no loss in land values. (16)

RESPONSE: The Department agrees that clustering and other land use techniques can be valuable parts of municipal planning ordinances. However, the Department cannot mandate these techniques. The appropriateness of these and other planning tools should be considered during municipal review of plans and ordinances, and when a municipality seeks plan endorsement through the State Planning Commission.

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192. COMMENT: The public participation requirements need to be strengthened to assure the public has early meaningful comment opportunity and an ability to contest and enforce delegated CAFRA permit decisions. (119)

RESPONSE: For projects in a sector that are approved by the municipal planning board, the public hearing requirements will be those afforded under the Municipal Land Use Law. In addition, those projects for which the Department determines that a CAFRA individual permit, general permit or other coastal permit is required, will be subject to the public participation requirements applicable to the respective permit process. The intent of the Sector Permit process is to allow approvals granted at the local level to proceed with concurrent Departmental review. The Department believes that the public hearing requirements at N.J.A.C. 7:7-9.4(d) pertaining to the application to qualify as a sector and N.J.A.C. 7:7-9.7(a)2 pertaining to individual development applications within a Sector Permit municipality appropriately balance the public interest and the interest of a private party to proceed with a development project in a timely manner. N.J.A.C. 7:7-9.8 provides that the Department will publish notice that the Sector Permit is or is not applicable to an individual development in the New Jersey Bulletin. Further, before obtaining certification as a Sector Permit municipality, a municipality's application will undergo public notice and comment as required at N.J.A.C. 7:7-9.4(d). Specifically, these requirements are: (1) notice in the DEP Bulletin and publication of a display ad in the local newspaper; (2) a public hearing; (3) a written comment period; and (4) subsequent notice of the decision in the DEP Bulletin. In addition, there will be a notice of administrative change published in the New Jersey Register.

193. COMMENT: Additional financial and institutional measures should be included to assure that the municipality has the resources and professional staff capability to implement the Sector Permit. (119)

RESPONSE: The Department recognizes the need for additional financial resources to assist municipalities in implementing Sector Permits and is providing planning grants to coastal municipalities for preparation of Sector Permit applications. The Department is anticipating that a total of \$250,000 will be awarded to municipalities as part of this effort. Beyond these grant funds, additional financial and institutional measures should not be required. Certification as a Sector Permit municipality is based on the consistency of local plans and ordinances that a municipality uses to guide and regulate development with the Coastal Zone Management rules. Upon certification, CAFRA-regulated development is authorized through the regular municipal review and approval process, subject to concurrent review and oversight by the Department.

N.J.A.C. 7:7-9.5 Responsibilities of a Certified Permit Sector Municipality

194. COMMENT: The Sector Permit process adds many legal procedures that a municipality or applicant could inadvertently miss, thereby voiding an application. For example, the municipality may forget to report variances to the Department. The rules should be clarified to provide provisions for curing a procedural defect without further bogging down the process. (99)

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RESPONSE: The Department believes that the procedural requirements are appropriate. The example given by the commenter is not an easily cured “procedural defect” but a requirement that goes to the conceptual heart of the Sector Permit process. The Sector Permit process will not work if variances from the ordinances are routinely given at the local level and not reviewed by the Department to ensure overall conformance with the Coastal Zone Management program.

195. COMMENT: The Sector Permit rule states that a municipality shall not issue a building permit, final construction permit or authorize site preparation for any CAFRA regulated development outside of the sector unless a CAFRA permit for the development has been obtained. Clarification is needed as to the purpose of this change since current practices appear sufficient. (48)

RESPONSE: The language at N.J.A.C. 7:7-9.5(e) is intended to serve as a reminder that while CAFRA-regulated development within a sector will be subject to streamlined, concurrent State and municipal review, other CAFRA-regulated development outside of the approved sector will remain subject to review by the Department pursuant to CAFRA.

N.J.A.C. 7:7-9.7 Notification Requirements for Applications

196. COMMENT: The permit review process requires an initial notice and plan submission to the Department, and then a second submission of plans and resolutions within 7 days of planning board approval. A time limit is needed to give the Department a reasonable time to review, without delaying the municipal process. If plans are approved by the municipality without revisions, the second submission to the Department should be for verification that the Sector Permit applies, and that verification should be determined within 10 days. The 45-day decision period should only apply if the plans are substantially revised and “substantial revisions” must be defined in the rules. (99)

RESPONSE: At the stage of the process where the planning board finds that a project is complete for review (N.J.A.C. 7:7-9.7(a)1) there is no response necessary from the Department and the planning board may proceed with the public hearing on the application provided that 10 days notice is given in accordance with N.J.A.C. 7:7-9.7(a)2. Consequently, time limits for Department review would not be appropriate at this stage. In addition as noted in response to comment 183, the Department has determined that the 45 day review period following preliminary and final approval by the Planning Board is appropriate.

197. COMMENT: The Department has 45 days from receipt of notice of preliminary and final approval to determine whether or not the Sector Permit is applicable. This should be limited only to the preliminary approval unless there are changes from preliminary to final approval. The Department should not have multiple opportunities to review a decision. The proposal needs to specify what happens if the Department does not act within 45 days. (N.J.A.C. 7:7-9.7(a) 4) (30)

RESPONSE: The Department recognizes that, under the Municipal Land Use Law, some development projects may proceed after the planning board grants preliminary approval.

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However, design changes are frequently made between preliminary and final approvals, often to comply with conditions of the approving planning board resolution or county permitting requirement. Therefore, the Department needs to review plans both at the preliminary and final stages of municipal approval to ensure the plans remain consistent with the Coastal Zone Management rules. Since this process will obviate the need for a separate CAFRA application by individual applicants, the Department believes the 45-day time period is reasonable.

198. COMMENT: The notification requirement at N.J.A.C. 7:7-9.7 should also be placed on the local planning board. To place the responsibility on the applicant of forwarding signed resolutions to the Department will delay the process, since these resolutions are not sent to applicants until more than seven days after signing. (48)

RESPONSE: Applicants, not planning boards, have the greatest incentive to timely forward planning board resolutions and to avoid delay. Therefore the provision placing responsibility on applicants is adopted.

199. COMMENT: The Ocean County planning staff agrees with the concepts embodied in the proposed Sector Permit program. (6)

RESPONSE: The Department acknowledges this comment in support of the rule.

Chapter 7E. Coastal Zone Management rules

N.J.A.C. 7:7E-1.5 Coastal decision making process

200. COMMENT: N.J.A.C. 7:7E-1.5(b)1 contains the eight basic coastal policies. The policy concerning the maintenance and upgrade of existing energy facilities, and siting of additional facilities in a manner consistent with the rules of this Coastal Management Program is being amended to delete reference to the New Jersey State Energy Master Management Plan. Confirmation is requested that this regulatory provision does not apply to energy facilities, such as co-generation or other facilities, that could be located on the site of a proposed development. (77)

RESPONSE: This section of the basic coastal policies applies to all energy facilities subject to regulation under CAFRA or the Waterfront Development law. The amendment at N.J.A.C. 7:7E-1.5(b)1vii to delete the reference to the N.J. State Energy Master Plan is necessary to reflect the fact that this plan no longer exists. The provision requiring that the siting of energy facilities must be consistent with the Coastal Zone Management rules remains in place.

201. COMMENT: The proposed deletion of the determination of the need for energy facilities at N.J.A.C. 7:7E-1.5(b)vii and reliance on the Energy Use rule at N.J.A.C. 7:7E-7.4(r) is not appropriate. While it is correct that the State Energy Management Plan no longer exists, it is not appropriate to simply delete this provision for two reasons. First, strict regulation of energy facilities is a fundamental consideration in coastal zone management. The CAFRA statute was

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clearly intended to strictly regulate the need for and location of energy facilities in the CAFRA zone. These statutory provisions remain in effect. Therefore, because the Energy Master Plan no longer serves the purpose of determining need, the CAFRA rules must include equivalent provisions to make this determination. Second, the Energy Use rule is not equivalent to the determination of need process under the State Energy Master Plan. Furthermore, this provision is not even published in the text of the proposed rule, thus denying the public an opportunity to review the language. (119)

RESPONSE: The amendment at N.J.A.C. 7:7E-1.5(b)vii to delete reference to the N.J. State Energy Master Plan is necessary to reflect the fact that this plan no longer exists. These energy facilities continue to be regulated pursuant to CAFRA and the Coastal Zone Management rules. The application review process will consider information gained through the required public hearing or public comment period. Therefore, members of the public will continue to have input into decisions regarding the siting and construction of energy facilities in the coastal area. Thus, issues related to the need for and siting of energy facilities will continue to be addressed by the Department in its review of these CAFRA-regulated facilities. As noted in the proposal summary, the Department intends to propose as part of the next readoption of the Coastal Zone Management rules, amendments to the Energy Use rule that will update it to reflect the current organizational framework and energy policy. The Energy Use rule itself was not proposed for amendment as part of the proposal adopted herein; consequently, the text of it was not included.

202. COMMENT: Porous paving, paver blocks, gravel, crushed stone, crushed shell, elevated structures (including boardwalks) and other similar structures, surfaces, or improvements should not be considered as “impervious cover.” These materials allow stormwater to enter land and historically have not been considered by the Department as constituting “impervious cover.” By allowing these materials to be included within the definition of impervious cover, the truly “impervious cover” will be limited. (77)

203. COMMENT: Porous pavers, paver blocks, gravel, crushed stone and elevated boardwalk type structures should continue to be considered porous covers in Atlantic City due to its urban nature (hotels and casinos). (90)

204. COMMENT: The proposed definition of “impervious cover” is extremely limited. Most planning boards consider crushed stone, crushed shells and certain types of pavers as pervious materials when determining site coverage. By using these types of materials, developers can develop sites and also provide off-street parking since the pavers allow the infiltration of runoff. (25)

205. COMMENT: The definition of impervious coverage includes materials that have routinely been considered porous. There is no information provided which supports the inclusion of materials such as gravel, crushed stone, and crushed shell as impervious. These materials are clearly more porous than concrete and asphalt, and unlike concrete and asphalt, will allow infiltration of runoff. Including these more porous materials in the definition of “impervious cover” will remove any incentive for the use of such material thereby increasing the use of

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completely impervious materials. As a result, the stated goals of decreasing overall impervious coverage will be minimized. The proposal should encourage the use of materials that provide for greater infiltration than that of truly impervious surfaces. (30)

206. COMMENT: Washed river gravel open areas are being classified as impervious cover though they are more pervious than grassed areas. (28)

207. COMMENT: Considering materials (such as gravel, paver blocks and wood boardwalks) which have been traditionally considered pervious, as impervious cover is too restrictive. At the very least, the impervious cover limits should be increased and the traditional pervious covers such as gravel and paver blocks should continue to be considered a pervious cover. (116)

208. COMMENT: The Department's definition of "impervious cover," which includes anything "that reduces and/or prevents absorption of storm water into land" is too restrictive. Included as impervious cover under the proposal are materials such as gravel, paver blocks, crushed stone, crushed shell, boardwalks, and wood decks, all of which have traditionally been considered by the Department to be pervious in the past. This definition is unreasonably broad because virtually anything (except perhaps lawns) can be considered by the Department to be impervious. (57)

209. COMMENT: The definition of impervious cover which includes gravel, paver blocks, wood decks, crushed stone and crushed shells is unreasonable. These materials have been considered pervious in the past and should remain as such. Best engineering practice should be used on a case-by-case basis, not arbitrarily assigning materials to impenetrable or semi-permeable categories. (12)

210. COMMENT: The commenter objects to the definition of impervious coverage and urges the Department to revise the definition. (102)

211. COMMENT: The definition of impervious cover, by excluding semi-pervious surfaces such as gravel, makes the impervious cover and vegetation requirements even more onerous than they initially appear. Measures such as porous paving, long-thought of as a best management practice, should be encouraged, not penalized. The rules essentially leave only landscaping as non-impervious. (85)

RESPONSE TO COMMENTS 202 THROUGH 211: The adopted definition of impervious cover is not a departure from the prior development intensity rules in subchapter 5. On August 19, 1996 (see 28 N.J.R. 3024(a)), the Department amended the definition of "Acceptable Intensity of Development" (N.J.A.C. 7:7E-5.6(a)) to mean not only "structures," but also "paving," which was defined to include both impervious paving and permeable surfaces such as gravel or paver blocks. At that time, the impervious cover limits were changed from the range of 30 percent to 40 percent (based on whether or not permeable surfaces were used) to a single standard, 40 percent. The August 1996 change was the result of the Department's extensive experience with permeable paving from August 1980 to August 1996. Frequently materials

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considered “porous” when applied during the initial development were replaced with impervious pavement at a later date. Additionally, more permeable materials used as a surface cover are often not properly maintained thus becoming more impervious over time. It has been the Department’s experience that permeable surfaces such as gravel or crushed shell become increasingly compact over time such that absorption of storm water by the underlying soils is greatly reduced and/or prevented. The intent of the Department is to limit the use of structures and covers that not only restrict storm water absorption by the underlying soils, but also reduce this absorption. The Department considers the definition of “impervious cover” to be appropriate for its application in these rules. In addition, these rules provide that properties can be redeveloped to the amount of existing impervious cover on a site at the time the CAFRA permit application is submitted.

212. COMMENT: Defining allowable impervious coverage is the key mechanism used by the Department in setting a development intensity of a site. For Atlantic City, the maximum site coverage under the coastal rules has been (and will remain) 90 percent. In the past, several developments in Atlantic City have been able to include porous pavers, boardwalk, etc. in their calculation of porous coverage (a minimum of 10 percent of the site area). The proposal eliminates this flexibility. While not immediately obvious as having a negative impact, the new definition of impervious cover will require 10 percent of a development site to be grass, lawns or vegetation. (90)

RESPONSE: Prior to the 1996 amendments to the Coastal Zone Management rules, the impervious cover limit for most sites in Atlantic City was 80 percent if impervious paving was used and 90 percent if permeable paving was used. However, the rules both prior to and after the 1996 amendments, required 10 percent of the site be planted in herbs, shrubs and trees. Therefore, the requirement for 10 percent of a site to be vegetated with herb/shrub or trees is not a departure from the existing requirements for high intensity development sites in Atlantic City.

213. COMMENT: The CAFRA permits issued for Caesars Hotel-Casino approved paver blocks and porous pavers as part of the impervious cover. How will areas already covered by porous pavement be treated when recalculating the impervious cover of a site as part of a project expansion or redevelopment of a site? The regulations should include a “grandfathering” provision, which would allow porous covers to be considered porous in future permit modifications or applications. (90)

214. COMMENT: The definition of impervious cover should be clarified to provide that prior impervious coverage calculations based upon a less expansive definition of impervious cover continue to apply to completed sections of development sites. (45)

RESPONSE TO COMMENTS 213 AND 214: The rules provide at N.J.A.C. 7:7E-5B.e(c) that if a site is located in a CAFRA center, such as Atlantic City, the impervious cover limit is either the impervious cover limit as determined from Table H or the amount of legal, existing impervious cover located on the site. Thus in CAFRA centers, existing porous pavers, paver

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blocks, boardwalks, and gravel would be counted toward the amount of legal, existing impervious cover and could be maintained or redeveloped.

215. COMMENT: The inclusion of storm water management structures as impervious largely ignores the reality that detention ponds and basins are generally vegetated or inundated, some producing good wetland habitat. (85)

RESPONSE: The rules provide at N.J.A.C. 7:27E-5.3(b) that stormwater management facilities are not counted toward the impervious cover limit for a site.

216. COMMENT: The proposed definition of impervious cover is too broad and the proposed impervious cover limits in Planning Areas 3, 4 and 5 are unrealistically low. Imposing these two criteria will only create large lot subdivisions, contributing to the “sprawl” development that the amendments are supposedly designed to reduce or eliminate. (14)

217. COMMENT: The proposed definition of impervious cover will effectively reduce the allowable three percent coverage in the Coastal Rural Planning Area and Coastal Environmentally Sensitive Planning Areas further since materials that were traditionally pervious are now being considered impervious. (57)

RESPONSE TO COMMENTS 216 and 217: Compact development is provided for in 108 CAFRA and Coastal centers within these coastal planning areas, and the Department’s intent is that the Coastal Fringe, Rural and Environmentally Sensitive Planning Areas be developed at a lesser density. As noted in the response to comments 202 through 211, the adopted rules do not change the Department’s regulatory approach that treats impervious cover as encompassing paving surfaces such as gravel, crushed stone or crushed shells.

218. COMMENT: Under the definition of “impervious cover” surfaces such as gravel, crushed stone and crushed shells and decks would be considered impervious cover. It should be pointed out that substantial portions of many commercial and residential properties on developed barrier island communities use gravel instead of lawn areas, which in most cases are as pervious (if not more pervious) than lawns. Penalizing property owners for the use of gravel in landscaping settings thereby forcing utilization of grass lawns and their requirements for watering, fertilization, insect control, etc. would appear to run contrary to sound environmental planning. (79)

219. COMMENT: “Impervious” as defined in the dictionary, is something that is incapable of being penetrated. Under this proposal, the Department has defined impervious to include any structure, service or improvement that reduces and/or prevents absorption of stormwater. Something is not impervious if it absorbs stormwater. When paver blocks and other similar materials that have been considered pervious for years are included, the definition becomes unreasonably broad. Most houses on the barrier islands do not have grass lawns. For example, more than 70 percent of the houses in Avalon would not comply with the 70 percent impervious

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cover limit since they use stones, clam shells and a variety of other materials which are pervious; instead of lawns. (58)

220. COMMENT: The definition of impervious coverage lacks common sense. The definition includes materials which allow the water get through to the ground such as clam shells. In Stone Harbor, the Wetlands Institute has a parking lot that is paved with crushed clam shells and the water goes right through it and into the ground. In Avalon and Stone Harbor, people have small stones in their yards that, unless they have plastic underneath, allow water to pass through into the water table. The same thing happens with gravel. It makes no sense to call gravel, crushed shells and stone impervious. In addition, boardwalks and decks allow water to pass through them provided there is a space between the planks. The whole definition of impervious cover must be revised. (66)

221. COMMENT: Building coverage should not be equated with paver blocks, gravel surface driveways, crushed shell driveways and elevated structures such as boardwalks and decks. The character of a community and the impacts generated by development on the developed barrier islands are impacted far more by building coverage than by porous paving, paver blocks, gravel surfaces, crushed shell surfaces and elevated structures. Consideration should be given to some sort of weighting system to distinguish building coverage from the other more pervious features of a developed site. (79)

RESPONSE TO COMMENTS 218 THROUGH 221: Much of the development on barrier islands is not regulated under CAFRA, and most development on barrier islands which is regulated under CAFRA is construction of a single family or duplex dwelling which is not subject to the impervious cover limits. In addition, since all barrier islands are either coastal or CAFRA centers, the impervious cover limit for redevelopment of these sites would be the amount of existing impervious cover, including stones and crushed shell, or that determined from Table H. Therefore, the impervious cover definition will not restrict redevelopment of barrier islands, or prevent single family homeowners from using surfaces besides lawns in landscaping.

222. COMMENT: Calling crushed stone, clamshells, gravel and the like impervious brings a whole new definition to Websters. Has it occurred to the Department that redefining impervious cover by adding these new materials will set the standards of the engineering guidelines for septic systems, retention ponds, culverts and other filtering media into chaos? This is not logical. Under this proposed definition, the aquifers which the Department professes to protect, and which are the focus of this proposal, which are made of a non-porous material, would be considered impervious and therefore not rechargeable. (38)

RESPONSE: These standards apply only to the regulation of development under the Coastal Zone Management rules. They do not modify the standards for septic systems under N.J.A.C. 7:9A or those for stormwater management, which for coastal developments are governed by N.J.A.C. 7:7E-8.7. Also as noted previously, stormwater management facilities do not count toward the impervious cover limit on a given site.

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223. COMMENT: In Seaside Heights, many of the Borough's lands are being stockpiled for redevelopment in terms of parking lots and other similar structures. Redefining pervious as any ground cover area is onerous to the Borough's redevelopment efforts. (74)

RESPONSE: The rules provide at N.J.A.C. 7:7E-5B.3(d) that if a site is located in a coastal center, such as Seaside Heights, the impervious cover limit is either the impervious cover limit as determined from Table H (70 percent for a coastal town such as Seaside Heights) or the amount of legal, existing impervious cover located on the site. Thus in Seaside Height, existing porous pavers, paver blocks, boardwalks, and gravel would be counted toward the amount of legal, existing impervious cover which could be redeveloped, in some cases, above the 70 percent impervious cover limit.

224. COMMENT: Just as municipalities cannot zone property into inutility, the State should not, through the use of pervious and impervious cover definitions, make property undevelopable. (25)

RESPONSE: The Department has applied impervious cover limits under the Coastal Zone Management rules as a means to provide for development while balancing the need to protect the coastal environment. The impervious cover limits being adopted in this rule range from 3 to 90 percent, which is the same range found in the prior rules in subchapter 5. Further, the Department is adopting a rule at N.J.A.C. 7:7-1.10 that will allow relaxation of the substantive standards of the Coastal Zone Management rules when the strict application of those standards would otherwise result in an extraordinary hardship by precluding a beneficial use of a property.

Subchapter 3. Special areas

N.J.A.C. 7:7E-3.21 Bay islands

225. COMMENT: The area within the vicinity of Venice Park section of Atlantic City that is located adjacent to Route 30 and is surrounded by Beach Thorofare, Duck Thorofare and Newfound Thorofare, should be included in the list of areas at N.J.A.C. 7:7E-3.21(a)2 to which these rules do not apply. (77)

RESPONSE: N.J.A.C. 7:7E-3.21 includes a list of areas which are not considered bay islands, based on the location of the islands and the existing density of development and infrastructure currently in place. The area suggested by this commenter for exclusion from the Bay Island rule is not densely developed and does not have sanitary sewer service; therefore it does not warrant exclusion from the rule

226. COMMENT: Based on the environmental and public benefits provided by Bay Islands, redevelopment on Bay Islands should be regulated to the same degree that new development is under the current rules. The proposed impervious cover limits will allow more inappropriate development to occur as compared to current regulations, because the three percent impervious

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cover is not as protective as the current requirements, which include no feasible alternatives and minimization of environmental impacts. (119)

227. COMMENT: Rather than setting specific impervious coverage limits for the bay islands and thus creating an exception to adoption of the State Development and Redevelopment Plan in the CAFRA region, the State Development and Redevelopment Plan map should be applied throughout. The Bay Islands are designated Planning Area 5 for their obvious environmental sensitivity. These areas should follow the applicable coverage and development guidelines in reference to Planning Area 5. (10, 52)

RESPONSE TO COMMENTS 226 AND 227: The impervious cover limit for bay islands is three percent, which is the same as that of the Coastal Environmentally Sensitive Planning Area, with two exceptions. These two exceptions are redevelopment on bay islands, which can occur at the same density as legally existing development, and water dependent development on bay islands that abuts a paved public road and sewer line on bay islands, which can occur at 30 percent site coverage. The exception for redevelopment has been made in recognition of the bay islands' current attributes, and in an effort to encourage redevelopment over new development. The exception for water dependent development is warranted to further the Department's goal of providing access to the waterfront. This goal is also contained in the State Development and Redevelopment Plan. The rule is intended to balance the need to encourage public access to the waterfront by using bay islands with infrastructure for water dependent uses, with the need to protect these special areas where infrastructure is not currently in place to support these uses.

228. COMMENT: Under the proposed impervious coverage limits, bay islands are not taken into consideration when establishing net land area that can have impervious coverage. Bay islands are one of the areas designated as Special Water's Edge Areas that are subtracted from total land area. According to this formula, impervious coverage should be discouraged on bay islands and this can be achieved by applying Planning Area 5 coverage. (10, 52)

RESPONSE: In accordance with N.J.A.C. 7:7E-5.1(b), subchapters 5, 5A and 5B do not apply to portions of a site which are bay islands. Therefore, an impervious cover limit was established in the Bay Island rule for development on bay islands. See N.J.A.C. 7:7E-3.21. As noted in the response to comment 227 above, the impervious cover limit established for bay islands generally is three percent, which is also the impervious cover limit for the Coastal Environmentally Sensitive Planning Area. The exceptions to this standard are redevelopment on bay islands, and water dependent development on bay islands with infrastructure.

229. COMMENT: Sea level rise should be included in consideration of development on Bay Islands. Sea level rise in New Jersey is averaging one foot per century, although this rate appears to be accelerating and could be one foot in the next fifty years. Development of even one house on small bay islands, such as Marsh Elder Island in Southern Barnegat Bay, has an extreme impact on the area because of the cumulative effects on such a small land area. (10, 52)

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RESPONSE: The Bay Island rule is intended to limit development on bay islands, and conserve environmentally sensitive, undeveloped sites. However, redevelopment is permitted due to the already developed nature of some sites, and water dependent development is permitted at a higher density to further the goal of providing access to the waterfront.

N.J.A.C. 7:7E-3.25 Flood Hazard Areas

230. COMMENT: The commenter supports the proposed language clarifying that flood hazard areas are defined or delineated as A or V-Zones. (26)

RESPONSE: The Department acknowledges this comment in support of the rule.

231. COMMENT: Do the proposed amendments to the Flood Hazard Area rule at N.J.A.C. 7:7E-3.25(c) and (d) apply to single family homes or duplexes? (105)

RESPONSE: The Coastal Zone Management rules provide at N.J.A.C. 7:7E-7.2(e) that a single family home or duplex that is located upland of the mean high water line and is not part of a larger development need not meet the Flood Hazard Area rule, but rather the specific standards of N.J.A.C. 7:7E-7.2(e). This adoption does not change that rule.

232. COMMENT: Explain the purpose of the 100-foot setback requirement in undeveloped flood hazard areas. Is this to establish open space and greenways along tidal waters? (105)

RESPONSE: The purpose of the setback is to allow uses that are compatible with periodic flooding, such as agriculture or recreation, and/or that must be located along a waterway, specifically water dependent uses.

N.J.A.C. 7:7E-3.49 Atlantic City

233. COMMENT: The Atlantic City regulations, particularly the standards for construction of pedestrian bridges and construction on and servicing of the ocean piers, are not appropriate concerns for the Department. (40)

RESPONSE: The standards for construction of pedestrian bridges at N.J.A.C. 7:7E-3.49(e)2 and for servicing of piers at N.J.A.C. 7:7E-3.49(c)9, are intended to address the Department's obligation to maintain and enhance public access to and use of the oceanfront. These standards are necessary to minimize conflicts between different uses along the Boardwalk and to ensure the rights of the public to access the oceanfront, including the Boardwalk and beach. These standards are consistent with the Department's goals as embodied in the Coastal Zone Management rules, specifically the Public Access to the waterfront rules, N.J.A.C. 7:7E-8.11.

234. COMMENT: The Atlantic City rule as proposed is consistent with the philosophy of CAFRA and compliments the Department for recognizing the uniqueness of Atlantic City. (118)

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235. COMMENT: The commenter compliments the Department's professionalism, attentiveness and cooperation in working with Atlantic City on developing N.J.A.C. 7:7E-3.49. (37)

RESPONSE TO COMMENTS 234 AND 235: The Department acknowledges these comments in support of the rule.

236. COMMENT: Contrary to the stated intent of the Department, certain elements of the proposed regulations will make development in Atlantic City more difficult, more expensive, and less innovative. The commenter disagrees that the existing regulations and proposed regulations either facilitate development of Atlantic City oceanfront or allow Atlantic City to achieve any of the stated goals. (100)

237. COMMENT: There is no technical justification for the rules and their adoption will have a detrimental impact on both the redevelopment of Atlantic City and upon potential expansion and development of hotel casino facilities in Atlantic City. (45)

RESPONSE TO COMMENTS 236 AND 237: Since residential development is prohibited on piers and other development discouraged there, these new rules will in fact foster redevelopment of the piers for casino hotels and entertainment use. The development standards create a broad framework for development within which a great deal of flexibility is allowed. The new provisions that allow casino hotel development on the piers will have a positive impact on the redevelopment and expansion of casino facilities throughout Atlantic City. The rules also allow street closures for the assemblage of "superblocks" for casino development. Development in accordance with the rules will encourage people to come to the piers and thus strengthen their commercial use.

238. COMMENT: Not only do the proposed regulations hamper Atlantic City's ability to compete with other gaming jurisdictions, but they also hamper the ability of beachfront facilities to compete with proposed facilities in the marina section of Atlantic City. Development in the marina section of Atlantic City will place tremendous pressure upon existing and proposed Boardwalk casino hotel facilities. The relatively large areas of land available for development in the marina area will allow for more creative and competitive designs than are possible along the oceanfront because of the limitations imposed by the relatively small areas available for development along the oceanfront. This limitation in combination with the proposed regulations on street right-of-way development and the tower orientation regulation, will impede creative and competitive oceanfront development and place oceanfront facilities at a disadvantage to marina based facilities. (100)

RESPONSE: This rule would permit complete closure of 44 of 58 streets along the oceanfront and partial closure of six of these streets, allowing the assemblage of blocks to create "superblocks" for development. The tower orientation requirement also applies in the marina area which is bordered by Clam Thorofare. The Department believes that innovative design can be accomplished within the standards of the rule.

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239. COMMENT: Under the proposed rule, housing costs will increase and pier development may be discouraged. (65)

RESPONSE: The new rules are intended to foster redevelopment of the piers for casino hotels and entertainment use. The limited development activities that are allowed by this rule are not expected to adversely impact housing costs, given the fact that these activities represent only a small portion of the overall redevelopment of the CAFRA Urban Center.

240. COMMENT: The Atlantic City rule will impose rigid development restrictions which will both stymie creative development and in some cases completely prohibit development. The proposed rules provide predictability by denying development opportunities. (45)

RESPONSE: The development standards create a framework that allows design flexibility. Development is prohibited in only eight of 58 oceanfront streets, and only within the oceanfront block of these eight streets. Redirecting development elsewhere from these small areas is warranted in order to maintain a minimum number of unencumbered street-ends for public access to and use of the Boardwalk and oceanfront.

241. COMMENT: The Atlantic City rule is good for Atlantic City, but it has nothing to do with the 18 coastal municipalities in Ocean and Monmouth Counties for which the commenter provides consulting services. (105)

RESPONSE: The Atlantic City rule is intended to provide a more predictable permitting process for the unique redevelopment activities in the city of Atlantic City, promote tourism, maintain, enhance and promote public access to the waterfront, allow Atlantic City to compete with other gaming resorts and enable Atlantic City to reach its goal of becoming a world class resort. This Special Area rule is warranted in order to facilitate these redevelopment activities in the only New Jersey municipality where such development is driven by the casino industry. The remainder of the Coastal Zone Management rules deal with areas outside of Atlantic City.

242. COMMENT: The Marina District of Atlantic City will experience significant casino hotel development in the Huron North Redevelopment Area and with the expansion of Harrah's casino hotel. These Marina District developments will have a significant positive social impact and should be mentioned in the social impact analysis. (77)

RESPONSE: The Department acknowledges that redevelopment in the Marina District will have a positive impact on Atlantic City, along with redevelopment of the other casino district along the Boardwalk in Atlantic City.

243. COMMENT: Why isn't the Atlantic City rule simply a Sector Permit? All of the issues addressed in the Atlantic City rule could be addressed in the Sector Permit. It is important to have a rule with no exceptions because that creates precedent for other communities to get exceptions of some kind or another. (10, 52)

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RESPONSE: Atlantic City was singled out for special treatment by virtue of the casino referendum (Public Question Number 1, 1976 General Election) authorizing casino gambling in the City. In the Department's experience, development in Atlantic City over the past 20 years has been unlike that in other areas and the new Atlantic City special area rule recognizes and accommodates the unique circumstances of casino-oriented development. The special area rule for the Hudson River waterfront at N.J.A.C. 7:7E 7:7E-3.48 is in fact a precedent for the Atlantic City special area rule. The Department notes that since Atlantic City is a CAFRA center, the City could apply for certification as a sector permit municipality.

244. COMMENT: The phrase "State Marina area" at proposed N.J.A.C. 7:7E-3.49(b)1 is not defined. This area has been considered to be the area surrounding the Farley Marina including the Huron North Redevelopment Area. Atlantic City's redevelopment plan for the Huron North Redevelopment Area includes the construction of major casino hotels. To ensure that there is no future question regarding the geographic boundary of the State Marina area, this phrase should be defined in the regulations and should include the Huron North Redevelopment Area. (77)

RESPONSE: The rule has been amended upon adoption to clarify that the State Marina Area is the area bounded by Clam Creek, Absecon Inlet, Clam Thorofare, Penrose Canal, Absecon Boulevard, Huron Avenue, and Maryland Avenue to the northern edge of the Delta Basin. The State Marina Area includes those districts known as the Marina Development District and the Huron North Redevelopment Area, both of which are zoned for commercial and casino development. Thus the Huron North Redevelopment Area is part of the State Marina Area.

245. COMMENT: The provision discouraging casino hotel development in areas where access by public transportation between the proposed hotel-casino and Boardwalk is limited should be deleted. The State Marina area is planned for casino hotel development. Presently, public transportation in the form of jitney service is provided to this marina area to and from the Boardwalk. However, without any identifiable criteria, it is not known whether and under what circumstances public transportation between casino-zoned land and the Boardwalk could be deemed "limited." (77)

RESPONSE: Given the large numbers of people visiting Atlantic City, the Department believes it is critical that development proposals include accommodations for public transportation to allow movement between districts. However, the Department has not adopted specific criteria so that the individual casinos may devise appropriate transportation solutions. The current jitney service provides the public transportation required by this rule.

246. COMMENT: Proposed N.J.A.C. 7:7E-3.49(b)1ii discourages casino hotel development along access highways to Atlantic City. Significant casino hotel development will be constructed in the Huron North Redevelopment Area which is located within the vicinity of Brigantine Boulevard. Brigantine Boulevard, which provides access to and from Atlantic City and Brigantine, will be improved and expanded as part of the Atlantic City-Brigantine Roadway Connector Project. The commenter requests confirmation that the proposed casino hotel

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development in the Huron North Redevelopment Area will not be considered as being located “along” one of the “access highways to Atlantic City.” (77)

RESPONSE: This language has been in the Coastal Zone Management rules since 1980. However, in response to this comment, the Department has revised the rule on adoption to clarify that the access highways are Route 30, Route 40 and the Atlantic City Expressway. More specifically, the access highways on which casino development is discouraged are the entirety of the Atlantic City Expressway, Route 40 north and west of Beach Thorofare and Route 30 northwest of Penrose Canal

247. COMMENT: The proposed Coastal Zone Management rules define hotels as residential development on Atlantic City piers. Existing N.J.A.C. 7:7E-7.10, Commercial Facility Use rule, correctly defines hotels and motels as commercial establishments. Therefore, as commercial establishments are already permitted on piers in Atlantic City, a rule change is not necessary to permit hotels on the existing piers. (48, 37)

248. COMMENT: The proposed rule at N.J.A.C. 7:7E-3.49(c) allows residential development on Atlantic City piers in the form of hotel units. Hotel structures should not be defined as a residential use, rather they should be regulated under the existing commercial facility standards. The need for regulatory protection of human environment (for example health, safety, and welfare) is evident in high hazard areas where residents have some vested interest to remain in structures located in the high hazard zone. In the case of hotel units, no such vested right exists. The pier, as a commercial use, can be evacuated on a mandatory basis if such a need arises. Hotel units do not generate the type of environmental impacts associated with residential structures. The rule defining hotel development as residential use should be revised to reflect hotels, which are strictly transient, as commercial in nature. (74)

RESPONSE TO COMMENTS 247 AND 248: Although the Commercial Facility Use rule at N.J.A.C. 7:7E-7.10 recognizes the large commercial component of the casino hotels, the casino hotels are identified and regulated under CAFRA as residential development. The CAFRA statute, N.J.S.A. 13:19, specifically defines developments that provide one or more dwelling units as “residential development.” In addition, the Coastal High Hazard Area rule at N.J.A.C. 7:7E-3.18 specifically prohibits the construction of hotels and motels in coastal high hazard areas, which are the special flood hazard areas within which the ocean piers are located. Therefore, the new rule modifies the requirements to permit residential developments (hotels) on the five existing oceanfront piers.

249. COMMENT: In general, the inclusion of the proposed Atlantic City rule adding hotel rooms and casinos as permitted uses on piers, represents progress from the existing Department regulations in regard to the development potential on piers. (90)

RESPONSE: The Department acknowledges this comment in support of the rule.

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250. COMMENT: The proposed Atlantic City rule gives the casino industry the go ahead to build five more piers over the ocean in Atlantic City, with no regard to the sprawl which will accompany such an action. (34)

251. COMMENT: The proposal to build casinos on the piers will result in many more employees wanting to live in some of the most environmentally sensitive parts of the coast which have inadequate protection. Where is the Secondary growth analysis? (10, 87)

RESPONSE TO COMMENTS 250 AND 251: The Coastal Zone Management rules establish standards for the construction of development throughout the CAFRA area. The new rules in Subchapter 5 and 5B standards establish impervious cover limits based on location in a Coastal Planning Area, Coastal center, or CAFRA center. These reflect an inclusive planning effort and are intended to prevent sprawl in favor of concentrated patterns of development. This rule does not allow the construction of five more piers over the ocean, but rather allows for the redevelopment of the five existing ocean piers. Provisions to allow development on the five existing ocean piers is not expected to cause adverse secondary impacts and sprawl related to casino employee housing, since pier development is only a small component of the overall redevelopment in Atlantic City.

252. COMMENT: Allowing Atlantic City to build large buildings on piers is foolhardy. When a really good storm comes, people will die. (29, 110)

253. COMMENT: The commenter opposes the provision allowing the construction of structures on the ocean piers. (10, 87)

254. COMMENT: The proposed Atlantic City rule opens the door to construct casinos on the five major piers in that municipality. Building any major structure out over the ocean seems problematic considering the frequency of hurricanes and nor'easters. (27)

255. COMMENT: The Department acknowledges the fact that sea level is rising. Although structures on piers must be approved by the Federal Emergency Management Agency, the ability of the Federal Emergency Management Agency to control how or where things are built is questionable. If buildings on the piers crash into the water, all of us will pay because flood insurance is subsidized. (10)

RESPONSE TO COMMENTS 252 THROUGH 255: Although there is some risk to development and people located on an ocean pier in a major storm, any development proposed on the pier must have an evacuation plan approved by the Atlantic City Office of Emergency Management, in accordance with the Atlantic City Emergency operations Plan approved by the New Jersey State Police, Office of Emergency Management. In addition, the development must receive a waiver from the Federal Emergency Management Agency to allow the construction of residential development on the piers, which may be inconsistent with the Federal Emergency Management Agency-approved flood damage prevention ordinance of Atlantic City. In addition, federal flood insurance is not available for structures located seaward of the mean high water

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line. Therefore, potential damages to these developments are not expected to cost taxpayers contributing to the federal flood insurance fund.

256. COMMENT: This proposal would allow development to occur on piers over open water and in coastal high hazard areas in Atlantic City. There is no statutory basis authorizing the Department to propose special regulations only for Atlantic City or for the Department to create special incentives for Atlantic City. (119)

RESPONSE: The Department determined that Atlantic City is an appropriate place to be the subject of a special area rule because, like the other places governed by special areas rules in subchapter 3, Atlantic City merits “focused attention and special management rules” (see N.J.A.C. 7:7E-3.1(a)). As discussed in response to a previous comment, Atlantic City was singled out by a referendum (Public Question Number 1, 1976 General Election) authorizing casino gambling there. This Special Area rule accommodates the special circumstances of casino development in Atlantic City within the CAFRA regulatory framework.

257. COMMENT: Over time, development on the piers in Atlantic City is likely to be washed out in storm events or adversely impacted due to projected global warming induced sea level rise. Global warming is also expected to increase the frequency and magnitude of storm events, thus providing further basis and justification for restricting development in these high hazard locations. It is not acceptable to rely on prior approval by the Federal Emergency Management Agency. The Federal Emergency Management Agency does not function as a land use and development review agency for New Jersey’s coast. (119)

RESPONSE: Although it is true that the Federal Emergency Management Agency (FEMA) does not function as a regulatory agency reviewing permit applications, the agency may issue a waiver from strict compliance with its policies, and did in fact issue a waiver to Atlantic City for the Million Dollar Pier. The Department has changed the term “approval” to “waiver” at N.J.A.C. 7:7E-3.49(c)2 upon adoption of the rule. The goal of this provision is to ensure that applicants seeking to develop casino-hotels on the piers obtain the review of Federal Emergency Management Agency, which does have expertise in emergency operations, hazard identification, and risk assessment.

258. COMMENT: The proposed rule requires that applicants receive approval from the Federal Emergency Management Agency for any proposed hotel structures located on ocean piers in Atlantic City. The Federal Emergency Management Agency has no regulatory process for this. The Federal Emergency Management Agency monitors the issuance of building permits and construction activities to determine Atlantic City’s eligibility to be included in the Federal Flood Insurance Program. The Federal Emergency Management Agency will issue waivers from strict compliance with its policies, and has in fact issued one to Atlantic City for the Million Dollar Pier. However, the Federal Emergency Management Agency does not offer approvals for development. The regulatory format involves the qualification of a municipality for flood insurance based upon location of the development and availability of evacuation routes.

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Stipulating that the Federal Emergency Management Agency issue a waiver to Atlantic City is more appropriate. (74)

259. COMMENT: The proposed rule requires that applicants receive approval from the Federal Emergency Management Agency for any proposed hotel structures located over the water in Atlantic City. The Federal Emergency Management Agency has no permit application powers or procedures. The issue would appear to be one of whether a pier applicant has or can obtain insurance for the proposed use. If that is so, then the requirement under this provision should be for evidence of insurance. (90)

RESPONSE TO COMMENTS 258 AND 259: The Department agrees with the commenters that the Federal Emergency Management Agency does not issue approvals for development. The Federal Emergency Management Agency may, however, issue a waiver from strict compliance with its policies, and did in fact issue a waiver to Atlantic City for the Million Dollar Pier. The Department has changed the term “approval” to “waiver” upon adoption of the rule. The intent of this provision is that FEMA, with its expertise in emergency operations, hazard identification, and risk assessment, review proposed development on the piers to ensure that such development does not conflict with the Federal Emergency Management Agency-approved municipal flood damage prevention ordinance.

260. COMMENT: It is an unwise public policy to rely on the publicly subsidized National Flood Insurance Program and evacuation plans in lieu of the prevention, regional planning, and land use management objectives created by CAFRA. (119)

RESPONSE: Pursuant to the National Flood Insurance Program regulations at 44 CFR Chapter 1, Part 61.5(f)2, residential development on piers located seaward of the mean high water line does not qualify for federal flood insurance. As noted in the response to comments 252 through 255 above, although there is some risk to development and people located on an ocean pier in a major storm, any development proposed on the pier must have an evacuation plan approved by the Atlantic City Office of Emergency Management. In addition, the development must receive a waiver from the Federal Emergency Management Agency.

261. COMMENT: Allowing Atlantic City to build large buildings on piers will cause insurance rates and taxes to go up after a large storm. (29)

RESPONSE: As noted in the response to comment 260 above, the development on piers located seaward of the mean high water line will not qualify for federal flood insurance, thus damages would not be expected to increase the flood insurance rates for individual homeowners in the area. The benefits of this development, including local tax revenue and revenue to the Casino Reinvestment and Development Authority (which is used statewide), are expected to outweigh any local tax increase that might be implemented as a result of damages from a storm.

262. COMMENT: The rule gives the casino industry the green light to build on the five huge piers in Atlantic City over the ocean, 100 feet high, but fails to consider where all the new

workers will live. (113)

RESPONSE: Much of the surrounding area is within a coastal center or the Coastal Metropolitan Planning Area, where development at relatively high intensities is permitted under the new rules in subchapters 5 and 5B. Therefore, housing needs should be accommodated in these areas.

263. COMMENT: Proposed N.J.A.C. 7:7E 7:7E-3.49(c)1 limits development and redevelopment on piers to the footprint of the pier as depicted on the Department's 1995-1997 aerial photography. This would prevent full build-out of the piers to the boundaries of their underlying riparian grant, thus having a substantial detrimental impact where an existing pier, such as the Steel Pier, is substantially shorter in length than the underlying grant. There is no technical justification for the prohibition on expansion of piers. Expansion would be at the ocean end of a pier, thus would not adversely impact public use of the beach, but rather increase opportunities for the public to enjoy the oceanfront, especially in the evening and when weather is inclement. The limitation upon expansion of piers should be deleted. (45)

264. COMMENT: Proposed N.J.A.C. 7:7E-3.49(c)1 limits development and redevelopment on piers to the footprint of the pier as depicted on the Department's 1995-1997 aerial photography. This would prevent full build-out of the piers to the boundaries of their underlying riparian grant. The Ocean One pier is smaller than the underlying grant. Such a limitation of the right to expand the pier would constitute a taking of property rights. (90)

265. COMMENT: The commenter finds the provision which limits development and redevelopment on piers to the footprint of the pier as depicted on the Department's 1995-1997 aerial photography at N.J.A.C. 7:7E 7:7E-3.49(c)1 objectionable. This objection is based on the lack of an environmental rationale for either restricting the expansion of a pier to the length of its underlying riparian grant or prohibiting the relocation or reconfiguration of a pier to a location or configuration that is more compatible with adjacent land based development. The proposed regulation should be replaced by a more flexible regulation based upon objective environmental policies that would allow for expansion and/or relocation of a pier. An arbitrary limitation upon expansion or relocation of a pier without an environmental justification is unwarranted. (100)

266. COMMENT: The commenter would prefer that the five ocean piers may have a footprint equal to the total footprint area of the pier prior to the 1944 hurricane or as depicted on the 95-97 imagery, whichever is larger. (37)

RESPONSE TO COMMENTS 263 THROUGH 266: In order to recognize the economic aspirations of the Atlantic City casino industry and the purpose of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) in the context of compatible land uses and in recognition of the variety of uses of the coast, the Department has determined to permit construction only on existing piers, rather than on extended piers, which would intrude on ocean views and impact beach uses. In addition, the extension of piers might have an adverse impact on sand transport and beach dynamics. For example, Department staff have observed that the reconstruction of the Million

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Dollar Pier in the mid-1980's resulted in alteration of the adjacent beach to the southwest, which resulted in loss of usable beach area and reduction in the protective value of the dune and beach. Therefore, the Department believes that limiting redevelopment of the oceanfront piers to the footprint existing in the 1995-1997 imagery is warranted.

267. COMMENT: Proposed N.J.A.C. 7:7E-3.49(c)1 limits development and redevelopment on piers to the footprint of the pier as depicted on the Department's 1995-1997 aerial photography. This imagery shows Steeplechase Pier after the fire damage that destroyed that part of the pier structure that attached the pier to the Boardwalk. In addition, the pier shown on the imagery only extends 630 feet from the north side of the Boardwalk while previous permits obtained in 1995 by Resorts identified the pier as approximately 660 feet in length at this point. Prior to the Hurricane of 1944 the footprint of the pier extended 932 feet from the north side of the Boardwalk. Since the proposed rule would only allow Resorts to reconstruct the pier within the footprint identified in the imagery, the lack of connection to the Boardwalk and the reduction in length from previously approved permits may limit the proposed redevelopment of the pier in its existing location. (74)

RESPONSE: The rule has been amended upon adoption to reflect that the portion of Steeplechase Pier between the existing pier and the Boardwalk would be able to qualify for a permit under this rule. The rule contains standards for placement of stairs to the beach, restrooms, changing rooms, pedestrian bridges, and access to walkways along the pier at the Boardwalk end of the pier, thus it clearly intended that each pier be connected to the Boardwalk. As explained in response to a previous comment, the Department has determined to permit construction only on existing piers, rather than on extended piers which would intrude on ocean views and impact beach uses. In addition, the Department believes that the existing pier footprint provides sufficient area to accommodate development and should not negatively impact potential redevelopment of the piers. However, the Department acknowledges that coastal permits were issued for reconstruction of the Steeplechase pier and that those permits remain valid until March 28, 2001. Therefore, Resorts can reconstruct the pier in accordance with the approved plan until March 2001. After that time, pier development would be limited to the footprint of the pier as shown on the 1995-1997 aerial photography.

268. COMMENT: It is desirable to relocate the Steeplechase Pier toward Central pier (further from the Steel Pier) in order to expand the usable beach between the Steeplechase and Steel Piers. The proposed rule does not provide for flexibility to do this. (74)

RESPONSE: The beach area between Steeplechase and Steel Piers is small. Therefore, bathers on the beach would, of necessity, be very close to one pier or the other, so the beach is not used much. In contrast, the beach between Steeplechase and Central Piers is longer and well utilized. The Department considered the idea of including a provision for moving piers, recognizing the desire to relocate Steeplechase Pier, but did not do so because it determined that there was not enough room between Steeplechase and Central Piers to result in a benefit from moving Steeplechase Pier, and the move might in fact create a second poorly utilized beach.

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269. COMMENT: The expansion of this development potential on the piers is consistent with the overall Department objective which encourages redevelopment of Atlantic City and its beach oceanfront facilities. However, the redevelopment and associated regulatory incentives should not be restricted to these piers. The City, along with the Casino Reinvestment and Development Authority is in the process of developing plans for the full revitalization of the Boardwalk, associated public areas and the beach. The Tropicana is considering options for enhancing the pedestrian experience along its Boardwalk frontage. Regulatory flexibility regarding development on and uses of the Boardwalk and its contiguous public areas will be required and should be addressed in these proposed regulations. (101)

RESPONSE: The Department acknowledges the ongoing planning initiatives for the Boardwalk and beach areas of Atlantic City involving the Casino Reinvestment and Development Authority, Atlantic City, and the casino industry. The Coastal Zone Management regulations are not intended to be static; if suitable plans are developed, appropriate for CAFRA purposes, the rules could be proposed to be amended as needed.

270. COMMENT: The proposed rule would unnecessarily impose a rigid numerical limitation (50 percent non-casino entertainment/recreation) on the uses permitted on the piers which cannot be modified by the Department. The Atlantic City Land Use Ordinance provides use standards for piers that are consistent with the Department's current regulations regarding public access to the oceanfront. Accordingly, this limitation should be deleted. (45)

RESPONSE: While the Department recognizes the economic aspirations of the Atlantic City casino industry and the purpose of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), the rules and development of the piers need to accommodate as well reflect the anticipated increase in the public use of coastal resources. Both the federal Coastal Zone Management Act and CAFRA recognize the importance of coastal resources, including beaches and tidal waters, to all interests. The limits on the uses of the pier are intended to appropriately balance these interests.

271. COMMENT: The proposed rule would impose front and rear setbacks and height/bulk standards on the piers. Bulk standards should be left to the Atlantic City Land Use Ordinance. Atlantic City officials are in the best position to judge the trade-off between development and the public's use of the Boardwalk and beach. These standards should be deleted. (45)

272. COMMENT: The rules propose new bulk and use standards for Atlantic City which are the proper jurisdiction of planning and zoning boards of the City. (101)

RESPONSE TO COMMENTS 271 AND 272: CAFRA and the federal Coastal Zone Management Act both recognize that development of compatible land uses that support diversity and that are in the best long-term social, economic, aesthetic and recreational interests of all people of the state is important in the coastal zone of New Jersey and of the United States, respectively. The laws recognize that standards for development along the coast are in the federal and state interest, as well as in the local interest. In order to ensure the broader interests are met, state standards that differ from the local standards have been determined to be

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appropriate. The Department notes that Atlantic City did not object to the bulk, height or use standards, nor did the City object to the setbacks for the piers.

273. COMMENT: The proposed rule imposes a set of standards that will hamper design innovation and which cannot be varied by the Department to accommodate innovative designs. This rule should be deleted. (45)

274. COMMENT: The combination of specific design requirements and the impossibly restrictive variance standards provides an applicant no room for creative design solutions. (90)

275. COMMENT: When combined with a new and onerous variance/waiver provision, an applicant will not be permitted to deviate from these standards, providing an inflexible and rigid approach to regulation. (100)

276. COMMENT: The lack of flexibility in the proposed regulations combined with the waiver procedure that is all but impossible to satisfy, will result in more costly and less innovative projects, and in some cases, will result in projects not being developed at all. Thus Atlantic City will be less able to compete successfully with the best gaming destination resorts in the world. (100)

RESPONSE TO COMMENTS 273 THROUGH 276: As noted in response to previous comments, the Department believes that the development standards create a framework for development that does allow design flexibility, including focal points for visual and physical public access to the coast. The rule at N.J.A.C. 7:7-1.10 will enable the Department to relax standards in order to prevent an extraordinary hardship to a property owner in the situation where application of the standards would prevent the property owner from realizing a minimum beneficial use of the property, not for design standard variances. By providing sufficient publicly accessible open space areas and public-oriented amenities such as waterfront seating and viewing areas, the Department believes that the proposed standards will encourage people to come to the piers and thus strengthen the commercial use.

277. COMMENT: If there are different bulk standards at the City and Department levels, an applicant must obtain variances from either the Department or the City. While the proposed Department regulations incorporate for the first time a variance procedure, the standard for granting such a variance is onerous, unlikely ever to be met and certainly not on bulk standards. City and Department bulk standards should be consistent. (90)

278. COMMENT: The proposed pier regulations impose use and bulk standards. The Department claims that these standards are consistent with the standards set forth in the Atlantic City Land Use Ordinance. A number of the standards are either different or more restrictive than those in the Atlantic City Land Use Ordinance. For example, the Boardwalk frontage building height standard is different and the rear yard setback is more restrictive. Land use standards are properly the subject of the Atlantic City Land Use Ordinance. The pier regulations should only regulate design to the extent that they address an environmental impact. The proposed

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regulations are unnecessarily restrictive and do not allow for flexibility consistent with underlying environmental policies. In order to ensure the public policy of restoring Atlantic City to a world class destination resort, it is imperative that environmental regulations not impose design criteria when the imposition of such criteria is not needed to achieve the underlying environmental objectives. (100)

279. COMMENT: There are inconsistencies between the Atlantic City Land Use Ordinance and the proposed regulations. The proposed regulations should be made consistent with Atlantic City Land Use Ordinance. The City is the appropriate land use planning authority. The proposed regulations should focus on environmental protection. (6)

280. COMMENT: These standards are in many cases contradictory to those in the Atlantic City Land Use Ordinance and in those instances the Department provides no rationale or technical justification for the inconsistency. The proposal includes several new regulations concerning development in Atlantic City while purporting to make Department regulation in the City a more predictable permitting process. There appears to be no technical basis for these regulations, many of which would provide very specific standards. (101)

281. COMMENT: Although the Department claims that the bulk standards are consistent with the Atlantic City Land Use Ordinance, there are a number of areas in which there are differences among the standards, including the setback at the seaward end of the pier (30 feet versus 50 feet). These standards should be deleted. (45)

RESPONSE TO COMMENTS 277 THROUGH 281: N.J.A.C. 7:7-1.10 will enable the Department to relax the standards in order to prevent an extraordinary hardship to a property owner in the proposed situation where application of the standards would prevent the property owner from realizing a minimum beneficial use of the property, not for design standard variances. The CAFRA statute recognizes the need to balance competing uses and encourages multiple uses which are in the best long-term, social, economic, aesthetic and recreational interests of all people of the State. The law does not focus strictly on environmental issues. Consistent with the Public Trust Doctrine and as set forth in the Coastal Zone Management rules at N.J.A.C. 7:7E-1.5(b)1v, the adopted rule reflects in part the goal of the Coastal Zone Management program to promote public access to the waterfront through protection and creation of meaningful access points and linear walkways. This includes the encouragement of commercial and recreational mixed uses, and measures to promote tourism, visual and physical access to the beach and water, and maintenance of the historical relationships along the Boardwalk and streets. The rules consider the experience of tourists and beach users of all types, including surfers, families, fishermen, daytrippers, and residents as well as casino hotel users. Therefore, the Department's standards for development differ in some aspects from those of the City, including having more area for public use along and at the end of piers. If a proposed pier development meets the Department's standards for development on a pier, the development would also be in conformance with the comparable City standards. As discussed in the response to comments 271 and 272, standards for development along the coast are intended to meet

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Federal and State interests, as well as local needs. This results in different standards between the Department and Atlantic City

282. COMMENT: The front and rear setbacks are inconsistent with the Atlantic City Land Use Ordinance, as are the provisions for pedestrian promenades. The logic for the rear setback seems inappropriate. (90)

283. COMMENT: Proposed N.J.A.C. 7:7E 7:7E-3.49(c)7 would require public open space for a distance of 50 feet at the seaward end of the pier at Boardwalk level, with seating and, where appropriate, fishing areas. This requirement is too specific in defining an area and location for the proposed public uses. It is not at all clear that there will be any significant public demand for use of the seaward end of a pier. This specific provision should be deleted and replaced by a more general provision requiring public access and public uses on piers. (45)

RESPONSE TO COMMENTS 282 AND 283: As discussed in response to the comments above, rules are designed to address the goal of the Coastal Zone Management program to promote public access to the waterfront through protection and creation of meaningful access points and linear walkways. Therefore, the Department's standards for development differ in some aspects from those of the City, including having more area for public use along and at end of piers. The setback at the seaward end of the pier recognizes the greater numbers of people expected to visit Atlantic City, particularly as the piers are redeveloped and more casinos are built. There are limited opportunities to enjoy the passive recreational coastal experience that can be provided at the seaward end of the piers. Therefore, it is all the more important that a portion of these areas be opened and reserved for public use.

284. COMMENT: Development on the piers is inappropriate as it cedes access and ocean view to the gambling industry. The public owns the beach up to the mean high tide line. (27)

RESPONSE: The standards for development on the five existing ocean piers have been developed with an emphasis on maintaining and enhancing public access to and use of the oceanfront. The standards include provisions for public access, public walkways and open space, public restrooms and changing facilities, and publicly accessible, non-casino entertainment and recreation. Therefore, adequate provisions have been included in this special area rule at N.J.A.C. 7:7E-3.49 to ensure that proposed development on the piers does not adversely impact public access to and use of the oceanfront including the beach and Boardwalk.

285. COMMENT: The provisions of the rule providing public access to the beaches do not provide for parking for the people who come to Atlantic City to go for a swim. (10)

RESPONSE: The requirement for proposed CAFRA-regulated developments in Atlantic City to provide parking is found in the Coastal Zone Management rules at N.J.A.C. 7:7E-8.14(e), Traffic. The newly established Atlantic City rule at N.J.A.C. 7:7E-3.49 does not exempt proposed pier developments from this requirement. In addition, the City of Atlantic City has a large number of parking facilities, both public and private, available to provide parking for

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visitors. Therefore, the existing parking facilities and parking requirements for new developments will ensure that adequate parking is available to support visitors to Atlantic City.

286. COMMENT: This rule would impose a number of public access requirements as a condition for development of a pier. A number of these requirements are onerous, unneeded or conflict with intended pier uses set forth in the Atlantic City Land Use Ordinance. To the extent that there is a legal obligation on the part of a pier owner to provide free public access to a pier, any rule proposed by the Department in this regard should provide for design flexibility to allow for developments of innovative and superior design. (45)

RESPONSE: The piers are destination points which offer a unique passive recreational experience that the CAFRA statutory framework intends. The Department also believes that amenities that bring more people to the piers will help to make the pier developments more successful. As noted in the response to comments 271 and 272, the Department's goals may differ somewhat from those of the City, resulting in some variation in standards, particularly as they relate to public use of the piers.

287. COMMENT: This rule includes a provision that would require stairways from the pier to the beach and from the Boardwalk to the beach adjacent to a pier. This provision is unnecessary. There are existing, conveniently located stairways from the Boardwalk to the beach adjacent to the piers. Stairs from the pier to the beach are undesirable because they would likely adversely impact the dune system and pose additional security risks because they create additional access points to the piers. (45)

RESPONSE: One goal of these rules is to promote use of the beaches in Atlantic City. The direct access to the piers need not be to the interior of the pier facility but may be to the pedestrian amenity/walkway only, thus minimizing the security issue. Stairways can be designed so as not to adversely affect a dune. The Department has standards in the Coastal Zone Management rules at N.J.A.C. 7:7E-3A.4 for dune crossovers and stairways. However, in response to the commenter's concerns, the Department has determined that stairs from the beach to the pier need be provided only at one side of the pier, and has modified the rule on adoption to provide stairs to the pier only on the southwesterly side of the pier, where the stairs will lead the pedestrian to the enhanced walkway along that side of the pier. In addition, the requirement for a stairway from the beach to the Boardwalk has been modified to require that the stairway be provided either at the northeasterly side of the pier or within 50 feet of that side of the pier.

288. COMMENT: The goal of ensuring public access to the waterfront can be achieved without the specific design criteria set forth in the proposed regulations. The specific design criteria would result in compromised pier designs. A more flexible public access provision requiring public access and uses on the pier will serve to ensure that public access is maintained while also allowing for superior, creative designs. The Atlantic City Land Use Ordinance currently has a public access requirement that will ensure compliance with rationale underlying the Department's proposed regulation. In addition, the Department's public access rule (N.J.A.C. 7:7E-8.11) is sufficient to provide for public access in connection with pier development. (100)

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RESPONSE: The Department believes that these standards are necessary to achieve the public access goals, described in the response to comments 277 through 281, and that they will promote all uses of the piers. Most of the standards correspond to the City's standards, such as walkways along the piers and an open area at the end of the piers. This rule requires slightly increased public areas, and adds standards for access to the beach and facilities for beach users to further the CAFRA goal of promoting uses in the long-term social and recreational interests of all people of the state, and the basic coastal policy of promoting access to the waterfront. In addition, the Department's experience is that the specific standards have proven to be effective for the Hudson River walkway, since these specific standards provide greater predictability in the design and permitting process for these developments.

289. COMMENT: The proposed rule requires excessive amounts of public space on ocean piers. The public space requirements have not been proposed as a percentage of developable space on the pier, but rather a fixed amount of public space is required. Due to the limited size of the Steeplechase Pier in relation to the other ocean piers, the requirement would adversely impact the development potential on the pier. Steeplechase Pier should be allowed to develop fully out to the pierhead line which, while not maintaining the existing footprint as identified on the Department's 1995-1997 imagery, would have a positive benefit to the human environment by providing greater public access to the waterfront. (74)

RESPONSE: The adoption of this Atlantic City special area rule, including the public access requirements at N.J.A.C. 7:7E-3.49(c)8, provides significant benefit to casino development, in that it allows for casino/hotel development on the five existing ocean piers. Under the previous Coastal Zone Management rules, such development was prohibited on the five ocean piers, which have historically been devoted to publicly accessible amusement and recreational use. Therefore, the public access requirements of this rule represent an appropriate mechanism to ensure continued public access to and use of these piers, as they are redeveloped with other, more exclusive casino development.

290. COMMENT: This proposed rule would require under-pier access for delivery service to a pier, or over-the Boardwalk access between the hours of midnight and 6 am only. The provision limiting over-the-Boardwalk servicing of the piers to between the hours of midnight and 6 am only should either be deleted, or else the hours for delivery should be expanded to allow for deliveries to at least 11 am. There is no technical basis for this rule. This issue is a local issue that should be left to Atlantic City. This provision should be deleted. (45, 100)

RESPONSE: N.J.A.C. 7:7E-3.49(c)9 is intended to minimize conflict between pedestrian uses (bikers, walkers, skaters and casino visitors) and mechanical vehicles servicing the piers over the Boardwalk. For example, Atlantic City permits bicycles on the Boardwalk only from 6 am to 10 am, with the 8 am to 10 am period more heavily used. However, the Department has modified the rule upon adoption so that the hours when service is permitted over the Boardwalk are from midnight to 8 am. This will still address the Department's concern related to conflicting uses of the Boardwalk, while providing sufficient opportunity for servicing of the piers. In addition, the

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Atlantic City rule does not prevent the construction of under-Boardwalk corridors to facilitate servicing of the piers, and service through such corridors would not be limited to specific hours.

291. COMMENT: The prohibition of service to the pier from the pedestrian walkway presents a design problem. The current service driveway around Ocean One is the only way by which pier uses can be serviced. With over the Boardwalk access, a perimeter service corridor around the pier is necessary at the boardwalk level, as was approved by the Department in the past. A major regulatory concern at that time was the ability to provide for emergency vehicle access to the pier. The existing roadway around Ocean One at the Boardwalk level was required for fire truck access. The proposed pedestrian promenade standards would preclude this means of emergency access. (90)

RESPONSE: Access to a pier by emergency vehicles would not be considered service for the piers and would be acceptable over the Boardwalk when needed in an emergency. Through pre-application discussions, Caesar's has indicated its intent to redesign the Ocean One pier for the new uses permitted by this revised rule. Changes to the servicing of the pier can be undertaken as the pier is redesigned to ensure compliance with this rule.

292. COMMENT: The proposed rule requires that service to the piers be under the Boardwalk, or if over the Boardwalk, be restricted to 12 midnight until 6 am. Caesars has evaluated the feasibility of a below Boardwalk service access tunnel to Ocean One and concluded because of major existing utility locations, that such access is not feasible. While the commenter agrees with restricting hours of vehicular access across the Boardwalk, it recommends that the permitted period should be 12 midnight to 11 am (as is allowed in the Waterfront Development permit issued for Ocean One). This would avoid expensive overtime and labor problems for delivery companies and would still restrict vehicular access during the peak pedestrian periods on the Boardwalk. (90)

RESPONSE: In order to provide service under the Boardwalk, an access tunnel would have to be located beneath the utilities under the Boardwalk, coming up in the center of the deck within the dry beach area. The Department acknowledges that this option may be logistically challenging, but believes that it represents a feasible alternative for vehicular servicing of the piers. Such a tunnel is currently in use under the Boardwalk and part of the dry beach at Resorts. As an alternative to the construction of a vehicular access tunnel under the Boardwalk, the rule as revised on adoption provides that the piers can be serviced over the Boardwalk midnight to 8 AM.

293. COMMENT: While the Department's objective is to encourage public access to and views from the perimeter of the piers, the strategy of setting specific standards, such as providing the walkway at the Boardwalk level and preserving different widths on either side seems inappropriate. Depending upon the building design, public access to view may be more valuable at another level. (90)

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294. COMMENT: This rule would require one 18 foot and one 12 foot open air pedestrian promenade at Boardwalk level along each side of the pier. This requirement can adversely impact the use and design of a pier. This specific provision should be deleted and a more flexible provision, similar to that in the Atlantic City Land Use Ordinance, should be adopted that allows for meaningful public access to a pier without unduly hampering creative design initiatives. (45)

RESPONSE TO COMMENTS 293 AND 294: The standards for walkways at the pier level exceed those of Atlantic City because of the Department's goal of promoting public access to the waterfront for all categories of users, consistent with the purposes of CAFRA. The different width standards for each side of the pier reflect the orientation of the piers and the greater use expected on the sunnier, southwesterly side of the pier. The placement of walkways at the Boardwalk level reflects the Department's commitment to accommodate the public from the street level and Boardwalk through the piers toward and along the shoreline. The Department would certainly encourage the inclusion of additional public viewing areas at other levels in building design.

295. COMMENT: This proposed rule would require public bathrooms, showers, and changing rooms on piers adjacent to the Boardwalk. This requirement is inappropriate and would impede pier development because the provision of such amenities has traditionally been a public function, the provision requires incorporation of uses incompatible with the pier uses intended by the Atlantic City Land Use Ordinance and the provision reduces the amount of already limited Boardwalk frontage that would otherwise be available for uses appropriate to a pier. (45)

296. COMMENT: The requirement for public bathrooms, showers, and changing rooms on piers adjacent to the Boardwalk is inappropriate because it cannot be justified by any environmental policy. These uses conflict with uses appropriate to a pier, limit the amount of Boardwalk frontage that could be available for more appropriate uses and limit the amount of pier space available for public access. (100)

297. COMMENT: The required public bathrooms, showers, and changing rooms on piers adjacent to the Boardwalk would more appropriately be located either on the Boardwalk, at a street-end or on the beach level. A pier at this level above the beach is not convenient for changing rooms nor is such a use appropriate in the environment the commenters intend to create. (37, 90)

RESPONSE TO COMMENTS 295 THROUGH 297: One of the main goals of the Department is to promote and facilitate public use of the waterfront, including the use of the beach by bathers, families, surfers, and fishermen. The provision of public bathrooms, showers and changing rooms is intended to support this use of the beach and facilitate the use of the beach by a greater number of people. They are appropriately located at the edge of the beach, adjacent to the Boardwalk, because this is where the transition between beach and other uses occurs. The height of the pier above the beach at this location is no different than that of the Boardwalk, and it would not be difficult for beach users to reach these facilities. The Department believes that

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these facilities can be designed in a manner that will not conflict with other pier uses, with separate entrances from the pedestrian walkway, while the Boardwalk façade accommodates the other pier uses. However, in consideration of these comments, the rule has been modified upon adoption to provide that the required public rest rooms, showers and changing facilities may be constructed at alternative locations along the beachfront, immediately adjacent to the Boardwalk, provided that these facilities are located proximate to the pier and are owned and maintained by the pier owner.

298. COMMENT: This proposed rule would require public bathrooms, showers, and changing rooms on piers adjacent to the Boardwalk. The Department has no legal right to impose this specific public use on a private property owner. (90)

RESPONSE: The Department has revised the rules to permit the construction of hotels and additional high rise commercial facilities on piers and closure of some streets in the City in order to facilitate the development of Atlantic City as a destination family resort. Many more people are expected to come to the City as a consequence, and they are likely to use the beach and Boardwalk. In addition, a large-scale federal beach nourishment project for the Atlantic City beachfront is scheduled to commence early 2000, at significant public cost. Support facilities for the beach users are therefore a necessary element. The piers extend below the mean high water line, and therefore occupy public trust property that the entire public has a right to use and enjoy under the Public Trust Doctrine. The public's rights include the right of recreational use of the waterfront. The Department is responsible for ensuring these public trust rights are implemented in Atlantic City as well as elsewhere along the coast.

299. COMMENT: The proposed rule at N.J.A.C. 7:7E-3.49(c)8i requires that pier development shall provide a means for pedestrians to walk along the dry beach under the pier from one side to another. Such a requirement may be impractical in some cases, and this should be so noted. (37)

RESPONSE: The Department agrees with the commenter that in some situations the beach may become so narrow as to preclude people from walking along the dry beach under the piers. The rule has been changed upon adoption to make an exception to the requirement to provide for pedestrian passage along the dry beach under the pier in cases where such passage is precluded by narrow beach width.

300. COMMENT: Proposed N.J.A.C. 7:7E-3.49(d) states that the construction of new commercial piers or expansions of existing commercial piers is prohibited. This section should either be deleted or clarified to allow construction and reconstruction of piers as long as they are consistent with the footprints allowed under proposed N.J.A.C. 7:7E-3.49(c)1. (37)

RESPONSE: The Department has modified the rule on adoption to clarify that reconstruction of the five existing ocean piers is acceptable in accordance with the standards of the Atlantic City Special Area rule at N.J.A.C. 7:7E-3.49.

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301. COMMENT: Clarification of the term “Boardwalk right-of-way” at proposed N.J.A.C. 7:7E-3.49(e)1 should be provided since it only describes a particular section of the entire Atlantic City Boardwalk. (37)

RESPONSE: In response to this comment, the term “Boardwalk right-of-way” at N.J.A.C. 7:7E-3.49(e)1 has been clarified on adoption to include a description for all areas of Atlantic City where the Boardwalk exists.

302. COMMENT: Proposed N.J.A.C. 7:7E 7:7E-3.49(e) does not address sidewalk cafes within the first ribbon (the most landward area) of the Boardwalk. The use of four foot planters, ropes, and stanchions associated with these cafes should also be included as permitted uses. (37)

RESPONSE: The placement of café tables, and benches on the Boardwalk are not regulated pursuant to CAFRA, unless the construction of buildings, roof extensions, or similar structures is involved.

303. COMMENT: Rhode Island Avenue is listed as a street wherein development would be completely prohibited by the proposed regulation. This would prohibit MGM from linking to any future casino project east of the proposed MGM site. The area east of the proposed MGM project is currently zoned for casino hotel use. The proposed regulation should be modified to only require that a given development provide physical access to the waterfront as required by the Public Trust Doctrine. (100)

RESPONSE: The Department has purposefully selected the streets that are not closed and developed under this rule. Rhode Island Avenue provides a conduit from the inner part of the City to the ocean. An elementary school is located on this street, and the street runs to the heart of new neighborhood areas as well as to the recently restored Absecon Lighthouse, a national historic landmark. Although the prohibition of development within this street prevents a physical link between structures on both sides of the street, large open areas of land in the blocks between the street-ends can be developed. In addition, if Rhode Island Avenue were not maintained as a street unencumbered by development, there would be a one mile stretch of land with no open street between the oceanfront and the interior portion of the City. The Department believes that such a distance between unencumbered ocean block street-ends will have an adverse impact on the ability of the public to visually and physically access the beach and Boardwalk in this area of Atlantic City.

304. COMMENT: This proposed rule provides rigid standards for development of pedestrian bridges over street rights-of-way. These standards should be left to the Atlantic City Land Use Ordinance, particularly given the inability of the Department to grant variance relief when circumstances warrant. (45)

RESPONSE: The Atlantic City zoning ordinance does include standards for the construction of pedestrian bridges. The Department’s standards for these structures at N.J.A.C. 7:7E-3.49(e)2 are consistent with the municipal standards. By including such standards in this rule, the

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Department can ensure that pedestrian bridges do not adversely impact Boardwalk and ocean views, and light and air penetration along the pedestrian-oriented Boardwalk.

305. COMMENT: The standards for development within certain street rights-of-way are arbitrary, without technical support and in combination with the proposed variance standard are unnecessarily restrictive and inflexible. Creative design solutions and responses to unique circumstances are precluded with this approach. There is no evidence of a technical basis for these proposed standards or a rational nexus between this proposed rule and the coastal policies. It would appear from the comments of Atlantic City that the Planning Department has similar concerns. The Tropicana agrees with the more flexible approach and suggested language proposed by the City. (101)

306. COMMENT: Proposed N.J.A.C. 7:7E-3.49(f) unnecessarily prohibits development without any technical justification. The selection of streets for any of the three categories is arbitrary. The Department asserts that the streets in the prohibited development category were chosen because they represent historically significant linkages to the oceanfront. The Department also claims that the Public Trust Doctrine, which requires public access to the oceanfront and the beach, requires development limitations for street rights-of-way in order to maintain views and access to the oceanfront. We are not aware of any factual or legal basis to support the rationale used to justify this proposed rule. The Boardwalk has historically blocked views of the ocean from streets. Development of street rights-of-way has no material impact upon physical access to the oceanfront. The right of the public to physically access the oceanfront can be achieved through far less restrictive means than a complete prohibition or severe restriction of development within a street right-of-way. The Public Trust Doctrine only requires physical, not visual, access to the oceanfront. (45)

RESPONSE TO COMMENTS 305 AND 306: These standards for development in street rights-of-way are intended to maintain the link of the inner parts of the city with the oceanfront and invite visitors to the oceanfront. They accommodate the inner city as well as the ocean edge. While the Boardwalk may block views of the ocean itself from the street, the Boardwalk is a component of the oceanfront environment and thus a part of the beach/oceanfront destination. Unlike a building, the Boardwalk offers the first hint that the oceanfront experience is before the visitor. The Department's experience with previous bridges over streets has shown that there is a need for balance between coverage of streets and open space. The standards allow flexibility in the design solutions for the substantial blocks that remain once other streets are closed completely or bridged. The Public Trust Doctrine requires that the public have reasonable physical access to the oceanfront. That access currently is provided by public street ends. Closure of some street ends, which is allowed by this rule, therefore implicates this doctrine. Further, the State courts have determined that public trust rights include the right to enjoy the oceanfront. Visual access is a well-recognized form of enjoyment for oceanfront visitors.

307. COMMENT: The standards for development within street rights-of-way, instead of facilitating development in Atlantic City, actually impede development. It locks in place a development pattern and does not allow for the flexibility necessary to accommodate new

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development proposals in the future. This proposed rule imposes a new substantially more burdensome regulation on Atlantic City development. (45)

308. COMMENT: Street right-of-way rules appear to be extremely restrictive and the maps which accompany the rules need to be reviewed. (65)

RESPONSE TO COMMENTS 307 AND 308: Development is prohibited in only eight of the 58 streets leading to the ocean and the prohibition applies only in the oceanfront block of these streets. This rule leaves the developer the ability to close entirely, or in large part, the remainder of the oceanfront blocks to create super blocks for development. By allowing the closure of many streets to create “superblocks” and providing clear standards to guide design, acquisition and planning, the Department believes that this rule will facilitate development in Atlantic City. The Department currently evaluates proposals to close streets under the Coastal Zone Management rules, including the Public Open Space rule (N.J.A.C. 7:7E-3.40), the Public Access rule (N.J.A.C. 7:7E-8.11) and the Scenic Resources and Design rule (N.J.A.C. 7:7E-8.12). The Atlantic City special area rule provides a more predictable means of addressing the issues related to public open space, public access and scenic resources and design for closure of streets in the oceanfront block of Atlantic City. The maps referenced in the rule are the municipal tax maps, not Department maps. They are available at the Atlantic City municipal tax office.

309. COMMENT: The City of Atlantic City disagrees with the provision prohibiting the construction of pedestrian bridges over the streets listed at proposed N.J.A.C. 7:7E-3.49(f)1. The commenter suggests discouraging these bridges over these roads unless it is demonstrated that the bridge is part of a unique urban design as well as imperative to the functionality of a specific design scheme that would have a significant positive impact on the development of Atlantic City. (37)

RESPONSE: The Department believes that the rules provide sufficient opportunity for bridging of streets. Bridges are prohibited in only eight of the 58 streets leading to the ocean, and only in the oceanfront block. All other streets may be developed in whole or in part. Preserving these eight primary streets ensures that a sufficient number of unobstructed corridors to the water are retained. Without these streets remaining open, Atlantic City would be walled off from the oceanfront.

310. COMMENT: The standards for development within street rights-of-way should not use the 1999 Atlantic City tax maps as the basis for establishing building controls in the rights-of-way of designated streets. In the event that the City approves a vacation of a portion of those streets, the Department should not retain development controls as though the street still existed. (90)

RESPONSE: The purpose of the regulation is to protect a limited number of streets from development, to achieve the goals described in previous responses. If the City approved vacation of one of these streets, the development prohibition under these rules would still apply, in order to maintain access from the interior of the City and the oceanfront. The Department is concerned

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about the long-term maintenance of these streets as Atlantic City is redeveloped in the future, and the requirements of this rule are intended to address this concern.

311. COMMENT: The preclusion of any development in the right-of-way of the Tier 1 streets at proposed N.J.A.C. 7:7E3.49(f) is too rigid an approach (especially given the severity of the variance standard). The Department should leave open the opportunity for creative design solutions in streets such as Missouri Avenue. The use of the term “discouraged” rather than the term “prohibited” would provide opportunities for creative designs and regulatory flexibility. (90)

RESPONSE: In the context of the overall, long-term redevelopment of Atlantic City, and given the fact that these restrictions apply to only eight of 58 oceanfront street-ends, the Department disagrees that the requirements at N.J.A.C. 7:7E-3.49(f) are too rigid. The standards allow flexibility in the design solutions for the substantial blocks on which development is not prohibited, that is which are not classified as Tier I or Tier II. The Department notes that the entire right-of-way of the oceanfront block of Missouri Avenue is restricted from development as a condition of a CAFRA permit issued to Caesars for constructing over Arkansas Avenue.

312. COMMENT: Proposed N.J.A.C. 7:7E-3.49(i) prohibits pedestrian bridges within 1000 feet of each other. There appears to be no technical justification for this standard (or for any other standards in this section). This rigid standard, with no effective opportunity for variance relief, is extremely limiting and may discourage creative pedestrian oriented design solutions needed in the future. (90)

RESPONSE: If bridges are constructed over the street closer to one another than 1000 feet, they begin to diminish the light and air which reaches the street below, and begin to “privatize” the space. Maintenance of light and air at the street level is one of the tenets of urban planning. However, bridges can be built closer to one another than 1000 feet, provided mitigation for these losses to the public is provided in accordance with N.J.A.C. 7:7E-3.49(j).

313. COMMENT: The provision that requires 1,000 feet between pedestrian bridges would prohibit construction of a pedestrian bridge linking Caesars with the current Traymore site as an integrated casino facility across Martin Luther King Boulevard. (48)

RESPONSE: The rule does not prohibit the construction of a pedestrian bridge across Martin Luther King Boulevard. Rather, it requires mitigation as provided at N.J.A.C. 7:7E-3.49(j) if two bridges are placed within 1000 feet of one another or the bridge exceeds the criteria at N.J.A.C. 7:7E-3.49(i).

314. COMMENT: The designation of Sovereign Avenue as a Tier I development street creates serious limitations to potential development on either side of the right-of-way. This designation should be modified to a Tier III ranking for the following reasons. Restrictions limiting development within and over the rights-of-way of Sovereign Avenue, which is within the Park Place development pod, limits the potential build-out of the necessary master plan elements for a

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first class destination resort. In addition, Sovereign Avenue does not offer a view of the waterfront area or the horizon. The Boardwalk has been designed at a higher elevation than the existing roadways leading up to it, limiting the view of the ocean horizon. Development within the right-of-way of Sovereign Avenue would, therefore, not create any additional impacts to the physical and visual access to the waterfront areas. Montpelier Avenue, the street adjacent to Sovereign Avenue, has also been designated a Tier I restricted street, for purposes of public access to the Boardwalk. (48)

315. COMMENT: Sovereign Avenue should not be included as a street where development within the right-of-way is prohibited. (37)

RESPONSE TO COMMENTS 314 AND 315: Sovereign Avenue is already restricted from development on the westerly side, as a condition of the CAFRA permit issued for development by Bally's Grand within Boston Avenue. Sovereign Avenue provides a tree-lined link from a strong mixed use neighborhood to the Boardwalk. The horizon line with the Boardwalk is visible and the Boardwalk is an integral part of the beach environment. The Department believes there is a need to maintain open access to the oceanfront at this location.

316. COMMENT: Sovereign, Missouri and Kentucky Avenues should not be listed as part of N.J.A.C. 7:7E-3.49(f), that is streets where development within the right-of-way is prohibited. Rather, these streets should be listed at N.J.A.C. 7:7E -3.49(g) where certain types of development are acceptable. Prohibiting development within these street rights-of-way will limit Caesar's possible future creative architectural concepts as well as facility efficiencies. (48)

317. COMMENT: The rule would completely prohibit any linkage between the Trump Plaza Hotel Casino and its neighboring casino hotel facility because the regulation prohibits development within the Missouri Avenue right-of-way. (45)

RESPONSE TO COMMENTS 316 AND 317: As noted in the response to comments 314 and 315, half of Sovereign Avenue is already restricted from development. In addition, the entire right-of-way of the oceanfront block of Missouri Avenue is restricted from development. The restriction on Missouri Avenue was imposed as a condition of the CAFRA permit as compensation for construction over Arkansas Avenue by Caesars. Only a very limited number of streets, eight of the 58 streets leading to the ocean, are not permitted to be developed under this rule, and only the oceanfront block of these streets. These standards for development in street rights-of-way are intended to maintain the link of the inner parts of the city with the oceanfront and invite visitors to the oceanfront. They accommodate the inner city as well as the ocean edge to preserve at least limited access to the water. The standards allow flexibility in the design solutions for the substantial blocks on which development is not prohibited, that is which are not classified as Tier I or Tier II.

318. COMMENT: The establishment of a 50-foot by 50-foot view corridor within the right-of-way of South Carolina Avenue presents further problems for a large scale development. The podium levels of most new casino hotels along the Boardwalk have been designed to be no

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higher than 60 feet in height in order to meet the High Rise structures rule at N.J.A.C. 7:7E-7.14. As such, the construction of a structure above the 50-foot view corridor may require such structure to be regulated under the High Rise Structures rule. In addition, the construction of pedestrian bridges at 50-feet above the street level is in conflict not only with Atlantic City Ordinances but may be problematic to connect to existing facilities that have been designed below the 60-foot threshold. (74)

RESPONSE: The Department acknowledges that pedestrian bridges across the beach block streets need to be oriented parallel to the Boardwalk and oceanfront in order to function. The Department also believes that the provision for requiring a fifty foot high by fifty foot wide corridor on a limited number of streets is critical to the preservation of pedestrian views and access to the oceanfront as the city is redeveloped in the future. Therefore, in an effort to balance these interests in the redevelopment of certain street-ends, the rule is being amended upon adoption to provide that pedestrian bridges which meet the standards of N.J.A.C. 7:7E-3.49(i)1, will be exempt from compliance with the High Rise Structures rule at N.J.A.C. 7:7E-7.14. It is anticipated that the longest lateral dimension of more significant structures constructed across the streets is likely to run inland from the oceanfront rather than across the street, and thus these structures are likely to meet the High Rise rule. The design of these structures would also be evaluated under the existing Scenic Resources and Design rule at N.J.A.C. 7:7E-8.12.

319. COMMENT: In keeping with the City of Atlantic City's goal of making the City a destination resort town similar to Las Vegas, Resort's master plan for development proposes the construction of a large-scale casino hotel with associated entertainment facilities within the development pod. Restrictions limiting development within and over the right-of-way of South Carolina Avenue, which is within Resort's development pod, limit the potential build-out of the master plan elements. The designation of South Carolina Avenue as a Tier II development street creates limitations to potential development on either side of the right-of-way. This designation should be modified to a Tier III ranking. (74)

RESPONSE: The standards for development in street rights-of-way leave developers the ability to close entirely, or in large part, the remainder of the oceanfront blocks to create "superblocks" for development and guide design, acquisition and planning. Designation of South Carolina Avenue recognizes that there may be some loss of view but that this is a prime location to maintain access. South Carolina Avenue represents a historical link from an interior park and public transportation stop at Atlantic Avenue to the oceanfront. The oceanfront area at South Carolina Avenue supports existing public amenities including a lifeguard stand, public restrooms and a public seating/viewing area adjacent to the Boardwalk. Furthermore, this designation was recommended by the Atlantic City Planning Department based on its analysis of the probability of future development programs for the expansion of existing casinos and construction of new casinos.

320. COMMENT: The intent of the proposed 50-foot by 50-foot view corridor for Tier II streets is to provide physical and visual access to the Atlantic Ocean. South Carolina Avenue does not offer a view of the waterfront area or the horizon. The street has been designated by the City as

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a one-way cartway going away from the beach area, therefore vehicles would not have the opportunity to utilize the established view corridor to obtain access to the waterfront. In addition, the Boardwalk has been designated at a higher elevation than the existing roadways leading up to it. This design limits the existing view of the ocean horizon. To further impede visual access to the waterfront, an existing lifeguard station building is located at the terminus of South Carolina Avenue, which prevents views of the waterfront. Development within the right-of-way of South Carolina Avenue would, therefore, not create any additional impacts to either the physical or visual access to the waterfront areas. (74)

RESPONSE: Although South Carolina Avenue is a one-way street away from the beach at this time, the rule is designed to consider pedestrian as well as automobile traffic. While the Boardwalk throughout Atlantic City is higher than the street, it is a part of the oceanfront experience. Additionally, the ongoing planning effort for the beach and Boardwalk by the Casino Reinvestment and Development Authority and Atlantic City is taking another look at the location of lifeguard stations. As noted in a previous response to comment, designation of South Carolina Avenue recognizes that there may be some loss of view but that this is a prime location to maintain a historical link from an interior park and public transportation stop at Atlantic Avenue to the oceanfront. Furthermore, this designation was recommended by the Atlantic City Planning Department based on its analysis of the probability of future development programs for the expansion of existing casinos and construction of new casinos

321. COMMENT: Proposed N.J.A.C. 7:7E-3.49(f)3, prohibiting development in the street right-of-way of that portion Albany Avenue located southeast of Pacific Avenue as shown on the 1999 Atlantic City tax duplicate or an alternative alignment with a minimum 60 foot right-of-way would unduly impinge advancement of another casino hotel project on the area currently occupied by Albany Avenue, since the City at one time vacated this portion of Albany Avenue in favor of the Dunes Casino Hotel. Further, public access to the beach and Boardwalk can be achieved through Roosevelt Place and Hartford Avenue. (77)

RESPONSE: The provision at N.J.A.C. 7:7E-3.49(f)3 is necessary to maintain visual access to the oceanfront and Boardwalk area along Albany Avenue. The Department is concerned about maintaining this historically significant linkage from the main entrance into Atlantic City, the Albany Avenue bridge across Inside Thorofare, as well as the War Memorial Park. It should be noted that the referenced provision would allow for an alternative alignment if the Albany Avenue right-of-way were realigned in the future to accommodate redevelopment in this area of the City.

322. COMMENT: The City of Atlantic City's mitigation formula should remain and not be replaced by the proposed CAFRA formula. The mitigation formula at proposed N.J.A.C. 7:7E-3.49(j) should not be increased to five times the property tax on the assessed value if development is constructed in a street right-of-way under 14 feet six inches. This adds an increased cost to the developer. (48)

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323. COMMENT: The proposed rule includes a mitigation formula for those projects that the Department approves within the targeted rights-of-way. Those projects below 14'6" would have to pay to the Casino Reinvestment Development Authority an amount five times the property tax on the assessed value of the right-of-way to be developed. The assessed value is defined as "an average of the value of the land on both sides of the right-of-way". For development above 14'6" the formula would be three times the assessed value. This formula significantly differs from the current approach that Atlantic City has taken in such cases. This mitigation amount would be in addition to the formula currently applied by the City. This language conflicts with and duplicates a right-of-way purchase mechanism that is already in place. (90)

324. COMMENT: The proposed mitigation fee would impose an unwarranted development cost to a project. The City of Atlantic City currently charges a fee, based upon three times the taxes that would be generated from a street if such street were taxable, as a condition of vacating any such street. The proposed mitigation payment would be in addition to the payment required by the City for a street vacation. The City of Atlantic City has also objected to an additional fee required by the proposed regulations and has suggested that the fee currently paid to the City for street vacations be used to fund oceanfront parks. MGM concurs with the City's comments. (100)

RESPONSE TO COMMENTS 322 THROUGH 324: The mitigation funds required by this rule are in addition to, not in lieu of, the City requirements. The existing city formula has not accomplished the goal of redirecting money to the oceanfront area for public improvement in support of public use of and access to the oceanfront. The goal of this provision of the rule is to create sufficient funds dedicated to public acquisition and or improvement of lands for public access and public parks. The amount of mitigation money is very small in comparison to the overall costs of development and acquisition and in light of the superblocks created by street closure, yet the public benefits are significant. One of the primary functions of the Casino Reinvestment and Development Authority is to plan, design and build public developments. The Casino Reinvestment and Development Authority is better able to dedicate the necessary resources to accomplish the public access oriented objectives, and can also match the mitigation monies. Thus, this rule provision is expected to result in tangible improvements, including acquisition and/or enhancement of property for the purpose of providing public access to the waterfront.

325. COMMENT: Mitigation funds should go to the City of Atlantic City and not the Casino Reinvestment and Development Authority, for projects in keeping with the City's planning efforts. (48)

RESPONSE: The Department will confer with the Atlantic City Planning Department in determining how the mitigation funds are used. The Casino Reinvestment and Development Authority is the appropriate agency to handle these funds for the reasons given in the response to comments 322 through 324 above.

326. COMMENT: The mitigation fee for development within a right-of-way is proposed to be

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paid to the Casino Reinvestment and Development Authority for the development of open space projects. Such a tax is not justified since development within a public right-of-way does not constitute a reduction in public open space. (101)

RESPONSE: As development is constructed within and over a street, there is a resultant “privatization” of the space, and loss of light and air to the street below. Depending on the extent of development, there is also a loss of visual and physical access, and of the connection of the interior of the City to the ocean. The mitigation fee is intended to compensate for the loss of the public access benefits the street provided, so that the benefits can be redirected to enhancing other public oceanfront areas.

327. COMMENT: The proposed mitigation fee is in addition to the payment already required by Atlantic City for the vacation of a portion of a public street. The Tropicana agrees with the recommendations included in the comment 328 from the Atlantic City Planning Department that this requirement be deleted and that the City will pledge those funds from street vacations to open space projects. (101)

RESPONSE: The City did not pledge that funds would be used to fund open space projects, although it did indicate that it may want to make such a pledge. Based on the Department’s concerns related to long-term public access to and use of the waterfront, the Department believes it is essential that the funds be so dedicated and that they actually be spent to implement projects. As discussed in the response to comments 322 through 324, the Casino Reinvestment and Development Authority is best suited for implementation of these mitigation projects because one of its primary functions is to plan, design and build public improvements. The Casino Reinvestment and Development Authority can also match the mitigation monies. The focused responsibility of the Casino Reinvestment and Development Authority will keep the focus on the need for the implementation of mitigation measures.

328. COMMENT: The Department claims that the proposed mitigation fee for development within a right-of-way is necessary to compensate for “the loss of air and light penetration and its effect on public use of these streets” and because the closure of streets impacts public access to the beach. Underlying the Department’s rationale is the notion that a street right-of-way is public open space and thus street closure results in loss of public open space. A street right-of-way is in fact property that has been dedicated by adjacent property owners for public passage, not public open space. Additionally, the impact of street closures on public access to the oceanfront can be mitigated through the design of a given project. There is no reason to pay a mitigation fee to create additional open space. Atlantic City has also objected to the payment because it is in addition to the amount required by the City to vacate a street. (45)

329. COMMENT: The underlying rationale for the mitigation fee is that development within a street right-of-way prevents or limits public access to the waterfront. Projects which are developed within a former street right-of-way can be designed to provide access to the waterfront. Because access to the waterfront can be maintained, street closure does not justify the imposition of a mitigation fee to compensate for the loss of such access. (100)

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330. COMMENT: The Department's proposed Atlantic City rule suggests that street rights-of-way be governed under the Public Open Space policies, and should be covered under the Public Trust Doctrine. This classification as public open space is in error. The streets in Atlantic City are dedicated for public travel, not as view corridors. (48)

RESPONSE TO COMMENTS 328 THROUGH 330: Public streets are used by the public for passage. Although streets may have been dedicated for travel, they provide both view and travel corridors. The two cannot be separated if the public is to be drawn to the oceanfront. The definition of public open space in the Coastal Zone Management rules at N.J.A.C. 7:7E-3.40 indicates that public open space includes land areas owned by municipal agencies or private groups and used for or dedicated to visual or physical public access. Thus public open space includes streets, particularly where they provide access to the water. The amount of mitigation money is very small in comparison to the overall costs of development and acquisition, and in light of the superblocks created by street closure, yet the public benefits are large. The mitigation fees will allow the implementation of a citywide approach to maintaining connections to the oceanfront, and a concerted effort to get the public to the oceanfront, rather than a site by site, uncoordinated effort. This effort will be all the more effective since the mitigation funds can be pooled for implementation of mitigation options. The Public Trust Doctrine requires public access to the oceanfront, which currently is provided by streets. Therefore, the Public Trust Doctrine is implicated by street closures. Without the mitigation requirement, public access to the oceanfront would be reduced through street closures, which would not be consistent with the Public Trust Doctrine and the Department's Public Access to the Waterfront rule at N.J.A.C. 7:7E-8.11.

331. COMMENT: The requirement that mitigation be provided for development within the right-of-way of a street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue at proposed N.J.A.C. 7:7E-3.49(j) should be deleted. Alternatively, this section should require that the City continue to collect compensation by its current formula of three times the annual property taxes for air rights. These funds should remain with the city to be used for an agreed upon project. The city may want to agree that these funds will be used for acquisition and improvement of lands for public access and parks along the oceanfront and inlet. (37)

RESPONSE: The Department agrees that it is essential that the City be involved in determining which oceanfront public access or public park mitigation projects are undertaken with the mitigation funds collected for development in street rights-of-way. However, for the reasons described in the response to comments 322-324, the Department believes that the Casino Reinvestment and Development Authority is best suited to collect the mitigation monies and implement projects specifically designed to enhance public access and use of Atlantic City's unique and valuable waterfront areas. The Department notes that previous expenditures of City collected mitigation funds may not have been directed solely for the enhancement of public access to the waterfront. However, the Department does anticipate that the City of Atlantic City will remain a partner with the Casino Reinvestment and Development Authority and the Department in decisions regarding expenditure of these mitigation funds

332. COMMENT: With regards to intercept parking, proposed N.J.A.C. 7:7E-3.49(k)iii requires that alternative scheme proposals include documentation indicating the existing travel pattern and mode of travel characteristics of non-Absecon and non-Brigantine Island resident employees. This could be interpreted to mean that implementation of alternative trip reduction schemes for a new casino facility would be limited only to experience-based alternatives. Thus, a new casino could not propose an alternative scheme due to lack of operating experience. Historically, proposed casinos have modeled alternative intercept parking proposals after the Atlantic City transport model prepared by Garmen Associates. The commenter suggests clarifying this provision to allow non-experience based alternatives to be considered by the Department. (77)

RESPONSE: A newly established casino could use all existing traffic data from other sources, including other casinos. In addition, the rule provides for the evaluation of post-operational traffic and parking management schemes so that the plans can be adjusted as necessary.

N.J.A.C. 7:7E-5.1 Purpose and scope

333. COMMENT: Although single family homes are exempt from the impervious and vegetative requirements contained in Subchapters 5, 5A and 5B, they are not exempt from special areas. Where are these special areas delineated? (105)

RESPONSE: Special areas on a particular site are identified and addressed on a case-by-case basis, as part of the coastal permit application process. Department staff routinely assist permit applicants in this determination. Special areas are defined and described in N.J.A.C. 7:7E-3.

334. COMMENT: The commenter applauds the Department for adding public parks to the list of types of development to which the impervious cover and vegetative cover requirements in Subchapters 5, 5A and 5B do not apply. (114)

RESPONSE: The Department acknowledges this comment in support of the rule.

335. COMMENT: The proposed rules should not apply to the construction or renovation of single unit properties. (19, 20)

RESPONSE: Pursuant to N.J.A.C. 7:7E-5.1(d)1, subchapters 5, 5A and 5B do not apply to single family homes or duplexes, unless the proposed development results in development of more than one single family home or duplex dwelling, either solely or in conjunction with an existing development.

336. COMMENT: Sanitary landfills at proposed N.J.A.C. 7:7E-5.1(d) should be defined. Sanitary landfill should include all sanitary landfills as designated by the Department whether non-operational, operational or to be constructed in the future. Since these landfills must be capped in accordance with Department requirements, imposition of impervious cover

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requirements would be inappropriate. The phrase “that are required to be closed in accordance with the requirements of the Department” should be added to N.J.A.C. 7:7E-5.1(d)6. (77)

RESPONSE: These rules pertain to proposed development. N.J.A.C. 7:7E-5.1(d) therefore excludes proposed sanitary landfills, and expansion of existing sanitary landfills from the requirements of N.J.A.C. 7:7E-5A and 5B. After closure, former landfill sites will be evaluated based on their location in a CAFRA center core or node, Coastal center or Coastal Planning Area.

337. COMMENT: Why has the Department maintained the existing approach for determining applicable impervious and vegetative cover limits for the upland waterfront development area? The proposal provides lengthy justification for a new approach which is noted as being streamlined and more efficient and which will result in better planning, yet this approach is not used in all areas covered by these rules. (30)

RESPONSE: The Department has bifurcated the section of the Coastal Zone Management rules addressing impervious coverage limits to provide separate procedures for the CAFRA area and the upland waterfront development area. This bifurcation was done to reflect the different mandates of these two statutes. Proposed subchapter N.J.A.C. 7:7E-5A (upland waterfront development area) contains the same standards that existed under prior subchapters for determining allowable impervious coverage on a proposed development site. However, the CAFRA amendments of 1993 required the Department to closely coordinate the Coastal Zone Management rules with the State Plan for the CAFRA area. Therefore, new subchapter N.J.A.C. 7:7E-5B establishes acceptable impervious coverage limits based on a site’s location in a CAFRA center or Coastal Planning Area. This is consistent with the CAFRA amendments of 1993, requiring close coordination of the CAFRA rules with the provisions of the State Development and Redevelopment Plan.

338. COMMENT: The commenter supports the continued exemption of mines from the requirements of proposed N.J.A.C. 7:7E-5A and 5B. (73)

RESPONSE: The Department acknowledges this comment in support of the rule.

339. COMMENT: The proposed rule at N.J.A.C. 7:7-5.1(d) exempts sanitary landfills from the impervious and vegetation cover requirements. This exemption should be expanded to exempt accessory developments at landfills from requiring a CAFRA permit. There are very stringent Department regulations that govern the development and operation of sanitary landfills. The Department’s Land Use Regulation Program should defer issues related to landfills to the Department’s Division of Solid and Hazardous Waste. (6)

RESPONSE: The Department’s Land Use Regulation Program has entered into a Memorandum of Agreement (MOA) on October 15, 1998 with the Bureau of Solid Waste Management, for the purpose of simplifying the review of CAFRA permit applications associated with sanitary landfills. While the Department cannot change the CAFRA statute to exempt these facilities from

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CAFRA regulation, the MOA should reduce the regulatory burden on the development and expansion of such facilities.

N.J.A.C. 7:7E-5.3 Impervious cover requirements that apply to sites in the Upland Waterfront Development and CAFRA areas

340. COMMENT: The incentive for the calculation of impervious cover limit based on total rather than net land areas should apply to all centers in any Coastal Planning Area and to any site in the Coastal Metropolitan or Coastal Suburban Planning Areas to encourage development of these areas deemed appropriate for development by the Department. (30)

RESPONSE: The Department disagrees. By maintaining the historical exclusion of Special Waters Edge areas (such as wetlands and wetland buffers) from the General Land areas impervious cover calculations, the Department will continue to protect and preserve these environmentally sensitive areas from adverse impacts associated with coastal development. This practice is consistent with the implementation of the impervious cover limits contained in the Coastal Zone Management rules since 1978. In addition, calculation of impervious cover limits based on total land area is allowed only for sites located in a CAFRA center, CAFRA core, or CAFRA node, thus providing an incentive for development in these areas, which have been identified and approved through the State Planning Commission and accepted by the Department under N.J.A.C. 7:7E-5B.2 as locations appropriate for development.

N.J.A.C. 7:7E-5.4 Vegetative cover requirements that apply to sites in the Upland Waterfront Development and CAFRA areas

341. COMMENT: The vegetative cover requirements arbitrarily restrict development. (28)

RESPONSE: Prior subchapter 5 did contain vegetative cover requirements. However, because the application of those rules often resulted in loss of forest preservation areas as lots were sold to individual homeowners, the new rules require that trees be clustered to ensure long-term preservation. In addition, clustered forest preservation areas will provide better and more varied wildlife habitat than the long narrow bands of trees possible under the previous rules.

342. COMMENT: Ways need to be found to include minimum amounts of natural ground cover and areas planted with trees in private suburban and commercial areas. It is possible to integrate undeveloped areas between developed areas. (1)

RESPONSE: The requirements for minimum vegetative cover on a development site at N.J.A.C. 7:7E-5.4, vary depending on the acceptable impervious cover limits for that particular site. These requirements are intended to restore and/or enhance vegetative plantings, including forest vegetation and herb/shrub communities, and cluster these natural areas to provide more significant blocks of open space and forest vegetation throughout a development site.

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343. COMMENT: Proposed N.J.A.C. 7:7E-5.4(d) sets forth the requirements for tree preservation and clustering for developments. This component of the proposal requires the borders of the tree cluster area to be permanently marked and protected from future development by a recorded conservation restriction. This is in essence a taking of property bargained for in good faith by the property owner. (12)

RESPONSE: The requirement for deed restricting and marking the boundaries of tree preservation areas is necessary to ensure the long term protection of these areas. The balance of the land could be developed under the permit issued; therefore, this is not a taking of property.

344. COMMENT: The commenter, which operates industrial and commercial sand plants in New Jersey and elsewhere, asserted that the proposed requirement for tree preservation ranging from 10 percent coverage in Planning Area 1 to 70 percent in Planning Areas 3, 4 and 5 puts an undue hardship on the property owner. (12)

RESPONSE: The impervious cover limits and vegetative cover requirements have been established to preserve the most ecologically sensitive and fragile lands, and high-quality agricultural lands, from inappropriate development. Development will be encouraged or concentrated where development already exists and where infrastructure is in place. The rule exempts sand mining operations from the vegetative cover requirements, including tree preservation requirements.

345. COMMENT: The tree clustering requirement will be difficult to implement. What is the rationale for requiring that there is a second entity responsible for enforcing the conservation restriction? Of the three options, local public entity, private non-profit or a homeowner association, experience shows that neither the local public entity nor the non-profit will be interested in taking on responsibility for these small parcels. The homeowners association will not have the expertise necessary to meet the ongoing maintenance requirements and prohibitions. If the Department feels that these areas of preserved trees need to have two levels of enforcement protection this responsibility should be retained solely by the Department or given to an entity with the proper expertise. (30)

RESPONSE: The requirement at N.J.A.C. 7:7E-5.4(d)4 is necessary to ensure the long-term preservation of these areas. The assignment of preservation responsibility to a public entity, a private non-profit group or a homeowners association will result in greater protection of these areas, and will simplify future enforcement of the preservation area by limiting the number of responsible parties. Since the potential tree preservation areas will exceed one acre in size, a public entity or non-profit group may have increased interest in enforcement of the restriction. In addition, homeowners associations routinely assume maintenance responsibility for common elements in a development site, including shade trees, greenways, stormwater management systems, club houses, and recreational facilities. Therefore, responsibility for tree preservation areas is not expected to add appreciably to the burden already assumed by these groups.

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346. COMMENT: Commercial, office and industrial development should be excluded from the requirement that the tree cluster area be located on one lot. This provision is unnecessary and removes the flexibility in landscaping: it will also lead to “tree-less” situations on some sites. (85)

RESPONSE: The requirement for tree clustering on a single lot at N.J.A.C. 7:7E-5.4(d) is intended to provide larger, contiguous areas of trees, in order to enhance wildlife habitat. The enhancement of this habitat is critical throughout the coastal area, regardless of the type of development (commercial, office, industrial or residential), and this provision will help achieve the goal of meaningful habitat enhancement. The Department has determined that tree preservation on a single lot is more protective than preservation of trees scattered throughout a development site. This requirement would not preclude the planting of additional trees on individual lots.

347. COMMENT: In the summary of the proposed rules, the Department states that “because certain wildlife species need large undisturbed areas for nesting and/or breeding, it is necessary to adopt policies that concentrate rather than disperse development.” However, a list of these wildlife species is not provided. Because the goal of the rules is to provide protection of certain (unnamed) wildlife species through vegetative cover requirements, in particular N.J.A.C. 7:7E-5.4, 5.5 and 5A.10, it is requested that the Department list the species of concern to provide the public and the regulated community the opportunity to comment on the appropriateness of the rules to accomplish the stated goal. (85)

RESPONSE: The Department is concerned about the protection of all wildlife species inhabiting the coastal areas. The preservation of large areas of wildlife habitat, particularly trees, serves to provide suitable habitat for many of the more than 250 statewide species of neo-tropical songbirds. In addition, such vegetative communities also provide habitat for a plethora of other wildlife species by maintaining vertical and horizontal vegetative diversity. This concern was expressed in the vegetative requirements in prior subchapter 5. In response to the extensive development and associated habitat destruction that has taken place throughout the coast, the vegetative coverage requirements are being continued in the adopted rules in an effort to maintain and enhance wildlife habitat in these areas.

348. COMMENT: In addition to publishing a list of the wildlife species that require large undisturbed areas for nesting and/or breeding, the agency must provide for comment the scientific documentation that the primary habitat of the species of concern occurs in the CAFRA area and that implementation of the rules will provide the necessary environmental conditions to ensure meaningful protection of the species. (85)

349. COMMENT: The vegetation requirements, particularly the number of trees to be planted and the conditions on removal of dead trees, are not appropriate concerns for the Department. (40)

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RESPONSE TO COMMENTS 348 AND 349: The coastal area, as defined by the CAFRA legislation, contains habitat for over 400 species of wildlife. One of the primary goals of CAFRA is to enhance and preserve the coastal ecosystem, including the plants and animals that inhabit the area. In addition, CAFRA permits must cause minimal feasible interference with the natural functioning of plant and animal life processes. For this reason, the Department's Coastal Zone Management rules have included vegetative coverage requirements since their inception in 1978. The vegetative coverage requirements are necessary to further this goal of ecosystem preservation and enhancement.

350. COMMENT: The Department's goal to increase the amount of forest area in the CAFRA zone through the requirements at N.J.A.C. 7:27E-5.4 has merit. However, these requirements are too excessive since they are not necessary to accomplish this goal and would have negative environmental impacts. Instead, the Department should allow natural succession to reforest areas in the CAFRA area. The use of natural succession to forest an area in place of a required planting of trees is consistent with the Department's mission statement, specifically "To base our standards, decisions and activities on sound science" and "To promote energy conservation, pollution prevention and consideration of the cumulative impacts of activities in our actions...throughout the State." (85)

RESPONSE: While the Department concurs with the importance of natural succession of forest vegetation, the requirement for tree planting is intended to facilitate this succession by providing a vegetative community within which a forest will become established. In addition, the requirement of tree planting is appropriately placed on the developer of property, rather than subsequent lot owners within a development. This responsibility will ensure that the tree planting areas are adequately established at the time the development is constructed, resulting in better long-term enhancement of forest areas.

351. COMMENT: The commenter understands and supports the rule to limit the clearing of developable parcels and to provide for a meaningful forest coverage, however, the proposed regulations appear to be overly cumbersome and need to be simplified. At the very least a statement of purpose for this section that can be clearly understood should be incorporated into the rules. (6).

RESPONSE: The purpose of the vegetative planting and forest cover requirements is not only to help to preserve natural areas for wildlife but also to help prevent non-point source pollution in the CAFRA area, thus helping to maintain water quality. In addition, these vegetative requirements help to stabilize soil and to provide physical and visual buffers between adjacent land uses. The limits on clearing of developable parcels also minimize soil compaction due to construction activities, maintain natural drainage and infiltration of stormwater, and facilitate groundwater recharge. The Department believes that replacing the prior matrix that used environmental sensitivity, development potential, and region to determine development intensity with smart growth planning concepts does simplify the rule.

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352. COMMENT: The vegetation requirements penalize property owners who have contributed their land for open space and habitat over time without compensation. Many of these property owners are farmers whose only way out of the business is to retire and sell their land to a developer. If the Department wants to preserve this land as habitat, it should purchase it. (102)

RESPONSE: The goal of this rule is to preserve ecologically sensitive and fragile areas and high quality agricultural land while redirecting development to areas where development already exists and infrastructure is already in place. The adoption includes a rule, at N.J.A.C. 7:7-1.10, allowing the Department to relax any of the substantive standards of the Coastal Zone Management rules when their strict application would result in an extraordinary hardship to a property owner. In addition, farmland preservation programs administered by the State Department of Agriculture and County Agriculture Development agencies, are in place to provide some financial remuneration for property owners who opt to preserve rather than develop farmland.

N.J.A.C. 7:7E-5A Impervious cover limits and vegetative cover percentages in the upland waterfront development area.

N.J.A.C.7:7E-5A.1 Purpose and Scope

353. COMMENT: This section ignores the State Development and Redevelopment Plan entirely and creates a separate procedure for these areas. The idea was to simplify the planning process by using the State Plan Map. By continuing to ignore the State Development and Redevelopment Map, this is not achieved. That State Plan Map should also be incorporated into the upland waterfront development area. This would eliminate pages of this rule that are unnecessary and do nothing to simplify the process. Why did the Department decide to keep these under separate procedures? (10, 52)

RESPONSE: The rules were prepared in response to the legislative amendments to CAFRA that required the Department to closely coordinate its CAFRA rules with the State Development and Redevelopment Plan. Therefore, a planning process based on the State Plan concepts was initiated in the CAFRA area only at this time.

N.J.A.C. 7:7E-5A.4 Development potential

354. COMMENT: Proposed N.J.A.C. 7:7E-5A.4(b) would provide that no development potential can be determined for a development proposed in the Upland Waterfront Development area that is inconsistent with the Areawide Water Quality Management Plan. However, if a development is located outside of a sewer service area, the applicant has the right to provide on-site septic systems or an on-site wastewater treatment plant that complies with regulatory requirements for such facilities. Therefore, the fact that a project is outside of a sewer service area should not prohibit development. (50)

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RESPONSE: Areas designated as sewer service areas on an Areawide Water Quality Management Plan may be serviced by a sanitary sewer. Other areas on such a plan are designated for on-site treatment with surface water discharge. Some areas are designated for on-site treatment systems with groundwater discharge, including wastewater facilities with planning flows of less than 20,000 gallons per day, 20,000 gallons per day or more, or less than 2000 gallons per day (septic systems). If a development proposed outside of a sewer service area proposes to provide on-site septic systems or an on-site wastewater treatment plant, that development would be consistent with the Areawide Water Quality Management Plan if the area is designated for the proposed groundwater discharge. Therefore, this provision in the rule would not prohibit development outside of a sewer service area.

355. COMMENT: Wastewater Plan Amendments are sought simultaneously with other construction permits. Mandating that the Areawide Water Quality Management Plan consistency be established before an applicant can determine development potential means that CAFRA permit applications cannot be submitted until after consistency can be determined. In many cases, Areawide Water Quality Management Plan consistency is the last approval granted, and planning board resolutions are written to include these approvals as conditions that must be met before construction can be started. It is feasible to include these approvals as conditions of CAFRA permit approvals as well. (50)

RESPONSE: The development potential rule does not apply to CAFRA developments. However, the Water Quality rule, N.J.A.C. 7:27E-8.4, does require that a CAFRA development or developments in the upland waterfront development area be consistent with the Areawide Water Quality Management Plan. This conforms with the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and is necessary to ensure that appropriate planning occurs prior to development approval. The Department believes that decisions on Water Quality Management Plans should precede approval of individual CAFRA permits, in order to fully evaluate all potential impacts of the Water Quality Management Plan amendments and ensure consistency of the Water Quality Management Plans with the Coastal Zone Management rules.

356. COMMENT: A sewer line should not be required to abut a site for the site to be classified as having a high development potential, if the applicant is willing to extend the sewer line. (85)

RESPONSE: Development potential is determined based on the presence or absence of certain development-oriented elements at or near the site of a proposed development. These development-oriented elements include roadways with adequate capacity to accommodate the anticipated traffic generated by the proposed development; sanitary sewer systems with adequate capacity to treat the sewage generated by the proposed development; and adjacent developed property. In assessing the development potential for a proposed development site, the Department considers all existing development-oriented elements, since these elements appropriately reflect the ability of the site to accommodate the proposed development. The willingness of the applicant to extend a sanitary sewer line to serve a proposed development site cannot be considered in determining development potential for that site, since construction of the sewer line often requires significant independent review for acceptability in terms of the

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Areawide Water Quality Management Plan and the Coastal Zone Management rules. An applicant does have the option of working with the local utilities authority toward approval of a sanitary sewer extension which would provide service to a proposed development site, and thus would be considered in determining development potential for that site.

N.J.A.C. 7:7E-5A.8 Development intensity

357. COMMENT: Most of the upland waterfront development areas in the Pinelands National Reserve are located in Pinelands designated Forest Areas and are assigned limited growth ratings, meaning that high environmental sensitivity sites are limited to low development intensity, consistent with the Pinelands Comprehensive Management Plan. The commenter would be opposed to any provisions that would allow for more intense development on high environmental sensitivity sites in these or other regions that might be in the Pinelands National Reserve. (53)

RESPONSE: To ensure consistency between the Department's coastal rules and the Pinelands Comprehensive Management Plan, the Department entered into a Memorandum of Agreement with the Pinelands Commission February 8, 1988. In addition, the Pinelands National Reserve and Pinelands Protection rule at N.J.A.C. 7:7E-3.44 requires that coastal development be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502 and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). The rule also indicates that the Department will coordinate the permit review process through the procedure outlined in the Memorandum of Agreement. The Department will continue to rely on this when reviewing applications in the Pinelands National Reserve.

N.J.A.C. 7:7E-5B.2 Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores and CAFRA nodes, and coastal centers

358. COMMENT: N.J.S.A. 13:19-17 states that CAFRA is to be "closely coordinated with the provisions of the State Development and Redevelopment Plan and with the Coastal Zone Management Act of 1972." By using the State Development and Redevelopment Map as a starting point, the Department is recognizing the importance of having a statewide plan. However, by abandoning the tie-in with the State Planning Commission (SPC) by creating a "CAFRA Planning Map" and allowing the Department veto power of designations and boundaries, the Department is creating a dichotomous system, which leaves the communities of the coastal zone floundering in the middle, not knowing the relationship between the State Planning Commission and the Department. The commenters think the regulations should be changed to show a clear connection between CAFRA and the State Plan. (10, 52)

RESPONSE: The CAFRA Planning Map is based on the State Planning Commission's Resource Planning and Management Map. The provisions for the Department to review any changes to the State Plan's Resource Planning and Management Map before they are incorporated into the CAFRA Planning Map will ensure that the Planning Areas and center boundaries continue to comport with the goals and policies of the CAFRA statute and the Coastal Zone Management

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rules. The Department believes that future divergence between the Resource Planning and Management Map and the CAFRA Planning Map is unlikely, inasmuch as the Department is an active participant in the State Planning Commission's process for reviewing and approving boundaries.

359. COMMENT: N.J.A.C. 7:7E-5B.1 fails to mention the State Plan, State Planning Act or the Resource Planning and Management Structure of the State Development and Redevelopment Plan as a coordinating mechanism for the application of the CAFRA rules. It is unclear at this point how the rules in Subchapters 6 and 7 and General Location Rules will be implemented in coordination with the State Development and Redevelopment Plan Planning Area Intent and Objectives and statewide policies. Since the amended CAFRA legislation of 1993 required such coordination, it is important that the proposed rule changes require coordination in the implementation of all sections of the rules. (5)

360. COMMENT: In proposing these rules, the Department has expressly acknowledged the Legislative directive in N.J.S.A. 13:19-1 et seq. that the proposed rules be closely coordinated with the provisions of the State Development and Redevelopment Plan and with the federal Coastal Zone Management Act. The Department has also expressed its intent that the "proposed rules further CAFRA's mandate to develop compatible land uses in order to direct development into growth areas and limit it in outlying and environmentally sensitive areas." The Department should clarify that these objectives apply to all the provisions and rules within the Coastal Zone Management rules and the Coastal Permit Program rules, not simply the sections proposed for amendment in the August 2, 1999 proposal, to insure that the legislative directive and intent is carried out. (18)

361. COMMENT: Substantively, the basis and background document does not adequately address the State Development and Redevelopment Plan. The Department has not specifically based the State Plan coordination elements of the proposal on the statutory mandate contained in N.J.S.A. 13:19-17. Instead, the Department appears to have based the proposal on N.J.S.A. 13:19-2 (see text at 31 N.J.R. 2044). Specifically, the Department has made the following determination:

"the boundaries drawn by the State Planning Commission in the CAFRA area were established and drawn to serve the same purposes as the Department's boundaries under the Coastal Zone Management rules for the CAFRA area. The Department has further determined that the State Planning Commission boundaries are in keeping with the purposes of CAFRA statute...(See N.J.S.A. 13:19-2)"

It is clear from these determinations that the Department did not rely on Section 17 authority and mandate, but rather on the broad legislative purposes set forth in Section 2 of the original CAFRA. Furthermore, no factual or technical basis is provided to support these determinations. Basic administrative rulemaking principles require that the Department articulate on the public record the factual and legal bases that support all determinations.

The commenter also disagrees, as a matter of fact and law, that the State Planning Commission planning area boundaries were designed and drawn to serve or satisfy compliance

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with the regulatory purposes of CAFRA. Similarly, adoption of the State Planning Commission's planning area boundaries did not follow regulatory procedures and lack proper regulatory basis.

The proposal is not only based on a misfit between spatial planning concept and substantive policy. Under the proposal, the growth inducing aspects of the State Plan (e.g. centers) are clearly defined, but the growth managing elements of the plan (the framework of planning policies and processes) are completely ignored. This clearly demonstrates that the proposal is not closely coordinated or consistent with the legislative intent of the 1993 amendments. (119)

362. COMMENT: References to the Department's rejection of State Plan boundaries at N.J.A.C. 7:7E-5B.2(a) - (e) should be replaced with a reference from N.J.S.A. 13:19-17, Rules and Regulations, to ensure that planning area, community development and other boundaries are closely coordinated with and consistent with State Development and Redevelopment Plan and the Federal Coastal Zone Management Act of 1972. (32)

RESPONSE TO COMMENTS 359 THROUGH 362: The Department believes that these rules comport with N.J.S.A. 13:19-17 and with all other parts of the CAFRA legislation, and are closely coordinated with the State Development and Redevelopment Plan as a whole. The Legislature recognized the importance of coordinating the CAFRA regulations with the State Development and Redevelopment Plan in 1993, when it amended N.J.S.A. 13:19-17, but it also continued without amendment the purposes of CAFRA set forth at N.J.S.A. 13:19-2. These include protection of the environmentally sensitive coastal resources, and management of the coastal area pursuant to a comprehensive management plan in the best long-term interests of all State citizens.

The adopted changes to the CAFRA rules include substituting the CAFRA Planning Map, which is based on the State Plan Resource Planning and Management Map, for the Coastal Growth Ratings devised in the 1970's. Thus, the new rules are based on and coordinated with the State Plan's planning areas and other spatial planning concepts. In addition, elsewhere in this Register, the Department is proposing new rules describing the Coastal Planning Areas and the policy objectives for each Coastal Planning Area. The concurrent proposal also includes the proposed standards the Department will use when reviewing Planning Area and Center boundary changes formally approved by the State Planning Commission. The rules are intended to continue to ensure close coordination between the agencies.

The Coastal Zone Management rules (N.J.A.C. 7:7E) contain the substantive standards for determining development acceptability and the environmental impact of proposed projects that require coastal permits. Permitting decisions follow a three-step process (explained in subchapter 2) based on applicable Location rules (subchapters 3 through 6), Use rules (subchapter 7), and Resource rules (subchapter 8). The Use rules contain the standards that apply to particular kinds of development, and must be met in addition to the Location rules. The Resource rules include standards addressing a proposed development's impact on specific coastal resources, and must be met in addition to the Location and Use rules. In addition, N.J.A.C. 7:7E-1.5 contains the basic policy objectives of the Coastal Zone Management rules. Many of the objectives described in N.J.A.C. 7:7E-1.5, and many of the Use and Resource rules, already address and are consistent with State Plan policies and objectives. State Plan statewide policies on, for example, Air Resources, Water Resources, and Open Lands and Natural Systems

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have their counterparts in the Coastal Zone Management policies built into the various sections of N.J.A.C. 7:7E. Thus the Department believes that as a whole, these rules are closely coordinated with the State Development and Redevelopment Plan and are consistent with the legislative goals expressed in both N.J.S.A. 13:19-2 and 13:19-17.

363. COMMENT: The impetus behind the most recent proposed rule changes is the 1993 Legislative amendments to CAFRA, which required that the CAFRA rules be more “closely coordinated” with the State Development and Redevelopment Plan. The Department under the proposed rules has outrun and passed the Office of State Planning by designating its own interim “coastal centers” with the exception of those on barrier islands. (Maczuga 81)

364. COMMENT: The boundaries of designated growth centers within a State Planning Commission-endorsed municipal plan should be identical with those approved by the Department. This may involve some negotiations and compromise between the Department and State Planning Commission during the municipal plan endorsement process. Failure to achieve consistency between the Department and State Planning Commission mapping would be confusing to CAFRA municipalities in their efforts to implement growth management and conservation plans. (96)

RESPONSE TO COMMENTS 363 AND 364: Coastal centers are included in the adopted rules to facilitate on an interim basis the permitting of CAFRA-regulated development in a manner consistent with the goals of the State Development and Redevelopment Plan to direct development to growth areas and limit it in outlying and environmentally sensitive areas. The Department expects that municipalities will examine the coastal center delineations in relation to their own planning efforts and development and redevelopment issues, and in many cases, seek a different community development boundary and formal center designation by the State Planning Commission. This will continue to foster consistency between the State Development and Redevelopment Plan and the CAFRA rules.

365. COMMENT: The proposed rules are based on the five coastal planning areas; they appear to be pre-mature and should not be enacted until the State Plan Map is finalized. (85)

RESPONSE: The State Development and Redevelopment Plan was adopted by the State Planning Commission in June 1992. This State Plan remains in effect and continues to be implemented while the Interim (State Development and Redevelopment) Plan and the Resource Planning and Management Map proceeds through the cross-acceptance process. In addition, during 1999, the State Planning Commission adopted resolutions altering some center boundaries and designating new centers in the CAFRA area. In 2000, the State Planning Commission will adopt a revised plan which will include updated planning areas. The Department will conduct an independent review of planning area and center changes under new N.J.A.C. 7:7E-5B.2. The independent review will ensure consistency with the policies and regulations of the Coastal Zone Management Program.

366. COMMENT: The Cape May Planning Board is pleased with the CAFRA Planning Map.

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(104)

RESPONSE: The Department acknowledges this comment in support of the rule.

367. COMMENT: According to N.J.A.C. 7:7E-5B.2(a), the basis of the Coastal Planning Area boundaries is the out-of-date 1992 State Plan. The proposal identified the need to update the existing coastal growth rating maps, yet it relies on an outdated State Plan which is currently being revised. The 1992 State Plan boundaries are out of date. In addition, for the CAFRA area these boundaries are recognized as being flawed due to the limited involvement of these communities in the development of the 1992 State Plan. The specific inclusion of cores and nodes reflects this dating issue as there are no cores or nodes in the 1992 State Plan. In fact, to date there have been no cores or nodes designated by the State Planning Commission. (30)

368. COMMENT: There is currently no effective State Development and Redevelopment Plan. Under the law, the State Planning Commission is required to update and readopt a new State Development and Redevelopment Plan every three years. The last State Development and Redevelopment Plan was adopted in 1992. No new State Development and Redevelopment Plan has since been adopted, and it is unlikely that a new State Development and Redevelopment Plan will be adopted before the end of the year 2000. As such, it make little sense at this time to conform the CAFRA regulations to the 1992 State Development and Redevelopment Plan, since it is already out of date. (57)

369. COMMENT: Under the law, the State Plan was required to be updated within three years or by 1995. The Office of State Planning is still working on that update. Which State Plan is the Department “closely coordinating” these rules with? The 1992 State Plan which is out of date or the new Plan that has not yet been adopted? (57)

RESPONSE TO COMMENTS 367 THROUGH 369: The State Development and Redevelopment Plan was adopted by the State Planning Commission in June, 1992. This State Plan remains in effect and continues to be implemented while the Interim (State Development and Redevelopment) Plan proceeds through the cross-acceptance process. When the final plan is adopted by the Commission in 2000, the current plan will be superceded.

The planning areas delineated on the Resource Planning and Management Map are not outdated. The State Planning Rules (N.J.A.C. 17:32-1 et seq.) include a process to revise delineations. This process has resulted in planning area changes initiated by municipalities. In addition, the cross-acceptance process has given municipalities the opportunity to review and revise planning areas to reflect more accurate information and changes in development patterns and infrastructure, and municipalities have been able to petition for center designation or for community development boundary changes on an ongoing basis. The changes to the planning will be reflected in the State Plan upon its adoption in 2000. The Department will review these changes as well as newly designated centers, cores and/or nodes for incorporation into the CAFRA Planning Map, pursuant to N.J.A.C. 7:7E-5B.

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370. COMMENT: It is unacceptable that the Department have blanket veto power over the State Planning Commission center and boundary designations. With the Department basically creating its own version of the State Plan, the goals and criteria of smart growth planning have been negated. (10, 52)

371. COMMENT: If the State Planning Commission approves a center or endorses a plan, the Department should accept that delineation. The Department will have input during the State Planning process. It would create a problem to have two different center delineations (96)

372. COMMENT: It has been amply demonstrated what the result of unplanned, non-resource based site-by-site development permitting can do to coastal communities. Traffic congestion and environmental degradation that threaten property values, the quality of life and the economic future of coastal residents are only the surface indicators of a failed program perpetrating that failure. Empowering a state agency to effectively create its own version of a State Plan has long range negative implications worse than continuing the failed existing system in the short term. This re-proposal unlike the previous version makes it possible for the Department to overrule any changes in the cross-accepted 1999 map by pursuing one of the options described above. None of the options involve public participation beyond a hearing and comment period. In contrast to the original proposal (map changes approved by State Planning Commission), the current proposal at N.J.A.C. 7:7E-5B.2 makes it possible for Department to overrule changes in cross-accepted maps. No coordination with the State Plan will result in continuation of business as usual with no consensus building, no local planning just site by site permitting. Infrastructure decisions will continue to be expensive, unplanned and unpredictable. If this approach were duplicated in other agency rules, the result would be numerous uncoordinated plans and the State Planning Act would be useless. This is counter to the public interest. (5)

373. COMMENT: It is the commenter's understanding that in the event the Office of State Plan should catch up to the Department (i.e. approve new centers, cores and nodes within the coastal zone) the Department reserves the right to accept, reject or reject and revise the State Planning Commission's approved boundaries for its own Coastal Planning Areas, CAFRA centers, CAFRA cores or CAFRA nodes. This would appear to run directly contrary to the stated intent of the 1993 legislative amendments to CAFRA. Furthermore, the proposed rule provides no insight as to what basis the Department will use in approving, rejecting or revising an action of the Office of State Plan. The rule only provides for publication of the decision of the Department. This would appear to be extremely arbitrary and does not appear to afford any opportunity for any individual, municipality, or county to have any input in very important decisions. (79)

374. COMMENT: The proposal states at N.J.A.C. 7:7E-5B.2(b) that the Department will evaluate all new or changed boundaries adopted by the State Planning Commission to determine if the new boundary is consistent with the purposes of CAFRA and the rules. What criteria will the Department use to make these determinations? These criteria must be included in the rule. As the Department is a member of the State Planning Commission, its concern should be addressed during the review done by the State Planning Commission. The establishment of a

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dual review process will add confusion, time and cost to an already convoluted planning process. Further, what will happen in those instances where the Department either rejects or modifies a boundary which was formally approved by the State Planning Commission? Will the municipality be required to go back and forth between the Department and the State Planning Commission until the issue is resolved? If the State Planning Commission has approved a center and the Department does not, what options will be available to a municipality which has already invested time and money to go through the State Planning Commission process? (30)

375. COMMENT: The Department has the power to overrule State Planning Commission boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes. Under the State Plan, decisions are made with public comment, while the Department's decisions are without public review. The Department is a member of the State Planning Commission and participates in discussion and decision-making. (32)

376. COMMENT: The Department has stated that the proposed rules continue to implement the 1993 legislative amendments to the CAFRA statute, mandating that the regulations adopted to implement those amendments be "closely coordinated with the provisions of the State Development and Redevelopment Plan." The Department has also stated that it will review any new or changed boundaries of planning areas, centers, cores or nodes that the State Planning Commission formally approves and will make an independent finding that the changed boundary is, or is not, consistent with the purposes of the CAFRA statute and the Coastal Zone Management rules. Therefore, the Department and State Planning Commission may not agree on boundaries for centers, etc, and the municipality, the county or the developer will be caught in the middle when trying to get their projects approved. This does not seem to provide a streamlined permitting process for CAFRA regulated development. (109)

377. COMMENT: The adoption of the proposed rules will establish two independent, conflicting state level review processes to be implemented by the Department and the Office of State Planning for determining acceptable growth boundaries as submitted by municipalities. These processes present administrative and economic impediments to sound planning. (97)

RESPONSE TO COMMENTS 370 THROUGH 377: As a member of the State Planning Commission the Department is committed to participating in planning and development discussions with coastal counties and municipalities. However, the Department has an obligation to conduct an independent review of planning area and center changes in the course of administering the Coastal Zone Management Program.

New Jersey's Coastal Zone Management Program implements a set of laws that charge the Department with protecting and enhancing the coastal ecosystem. To ensure compliance and consistency with coastal policies, programs and regulations, the Department will review any new or changed boundaries of planning areas, centers, cores or nodes that the State Planning Commission formally approves. The Department will then make an independent finding that the new or changed boundary is or is not consistent with the purposes of the CAFRA statute and of the Coastal Zone Management rules. The Department believes that the comprehensive, cooperative planning process sponsored by the State Planning Commission will identify and

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resolve most, if not all, critical issues before it designates a center. Consequently, the Department anticipates that future divergence between the State Plan Resource Planning Management Map and the CAFRA Planning Map is very unlikely. However, to help address the commenter's concerns, the Department is proposing to adopt standards for review of State Planning Commission boundary changes in the concurrent proposal elsewhere in this Register.

378. COMMENT: The State Plan has been undergoing cross acceptance to make revisions to the outdated 1992 State Plan. This process is not yet finalized. Is it the Department's intent to review and pass judgment on each and every change which has been negotiated in good faith and at significant expense by local government? There is a 90-day time frame for the Department to publish notice in the New Jersey register on its determination of a State Planning Commission decision. What happens if the Department does not publish a decision within 90 days? The rule should address this situation and allow for automatic approval. (30)

RESPONSE: During the cross-acceptance process for the New Jersey State Development and Redevelopment Plan: Interim Plan, March 31, 1999 that is anticipated to be finalized in early 2000, the Department participated in the review of proposed planning area changes. The changes in planning areas in the coastal area were relatively minor. Requests to the State Planning Commission to amend planning area boundaries after the new State Plan is adopted are expected to be few. The Department will only reject a boundary approved by the State Planning Commission if it would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be clearly inconsistent with the purposes of CAFRA and the Coastal Zone Management rules. This is clarified in the concurrent proposal in this Register, at proposed N.J.A.C. 7:7E-5B.3(b). The Department expects to meet the rule's timeframes for publishing boundary decisions. However, because of the Department's obligation to conduct an independent review of these boundaries to ensure their consistency with CAFRA and because of the potential for a boundary change to have widespread impacts, the Department does not believe it would be appropriate for a boundary to be automatically accepted solely on the basis of a failure to publish the notice of findings within 90days.

379. COMMENT: Proper planning should begin at the municipal and county levels, rather than the "top down" approach imposed by the Department. Local officials and residents are in the best position to understand the nature of the land uses and resources which make up the community. Local residents should have an initial chance to decide which areas are worthy of protection, and where growth should be directed. Such decisions could then be subject to Department review. In the present case, however, the Department is simply attempting to impose its will without any meaningful local input.

The proposed CAFRA regulations will govern development within New Jersey's coastal area, which represents 20 percent of the land area of the entire State. The proposal does this by designating the land area within this region either as a center, or a planning area, and then assigning maximum impervious coverage limits to restrict future development. It is unclear, however, how the Department designated the centers and planning areas. The criteria utilized by the Department are nowhere identified. It appears that Department altered the planning areas set forth in the State Development and Redevelopment Plan. Since no centers are designated in the

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State Development and Redevelopment Plan, it is clear that the Department took it upon itself to designate the centers without utilizing any specific methodology. Had the Department disclosed how it designated these areas, the commenter would be better able to provide substantive comments. (57)

380. COMMENT: The Department imposed State Planning Areas on the coastal zone. Coastal center delineations and Coastal Planning Area delineations were mandated by the Department without any cross-acceptance. Thus, these are mandatory, non-negotiated delineations. (102)

RESPONSE TO COMMENTS 379 AND 380: The adopted rules are the result of significant outreach and public input. In consultation with county and municipal governments, the Department delineated boundaries of coastal centers through an extensive outreach effort, including numerous meetings with representatives of municipalities in the CAFRA area and meetings with every county planning office. The Department intends to continue to work with the State Planning Commission and local governments to evaluate and refine, as appropriate, center and Planning Area boundaries.

The primary objective of these new regulations is to replace a site-by-site decisionmaking process for developments within the CAFRA area with a permit decision-making process that reflects an inclusive planning effort. Rather than relying on the growth regions and indicators of development potential that the Department initially promulgated in 1978, this new framework is a comprehensive environmental design strategy to protect the coastal area from inappropriate development.

The Department did not alter any planning areas adopted by the State Planning Commission in the CAFRA area. Thus the Coastal Planning Area boundaries were established through an intensive cross-acceptance process with state, local and county governments. The Department carefully reviewed the boundaries already drawn by the State Planning Commission, the purposes for which they were established, and the factors that determined how the lines were drawn in order to determine whether the Department could use the boundaries under CAFRA. Based on its examination, the Department determined that the boundaries drawn by the State Planning Commission in the CAFRA area were established and drawn to serve the same purposes as the Department's boundaries under the Coastal Zone Management rules for the CAFRA area.

The coastal centers delineated by the Department were based on centers identified in the 1992 State Development and Redevelopment Plan. These centers were identified by local governments through the cross-acceptance process that was conducted from 1988 through May 1992 with all municipalities and counties in the state. The Department then conducted an outreach effort to all coastal municipalities and counties asking them to identify other centers. A public notice was published with the 1998 rule proposal offering a process by which municipalities could identify to the State Planning Commission places that should be considered for delineation as coastal centers for purposes of the proposed rules. The Department also announced this opportunity in letters sent to municipalities in the CAFRA area, at four public hearings, and in press releases and other public statements.

The Department's protocol for mapping the boundaries of the coastal centers was described in some detail in the proposal summary at 31 N.J.R. 2059. For the coastal centers on

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barrier islands and on oceanfront spits and peninsulas, the boundaries of the coastal centers are largely coincident with the boundaries of the municipalities in which the centers are located. For the coastal centers on the mainland, the delineated boundaries recognize as much compact development and mixed use development as possible, including buildings, pavement, and other structures with impervious surfaces.

As described in the summary which accompanied the rule proposal being adopted herein, the Department defined coastal center boundaries through the use of readily identifiable natural and cultural features. The process for identifying and mapping boundaries will facilitate implementation of this rule by the Department as well as the CAFRA-regulated community, by providing concise descriptions.

In the Coastal Rural and the Coastal Environmentally Sensitive Planning Areas, some coastal centers include less densely developed areas next to compact development to accommodate growth when requested by a municipal or county officials, based on their representations that development was planned for the areas in the next several years, and when there was evidence of imminent development, such as existing sewer lines. The Department also included larger growth areas in coastal centers in the Coastal Suburban and the Coastal Fringe Planning areas.

381. COMMENT: It is clear that the residents of Ocean County desire to manage development and preserve open space. What is needed are cooperative, consistent plans at all levels of government to provide for future growth and redevelopment. The cross-acceptance process could provide a catalyst for this cooperative planning effort. The commenter is concerned that inclusion of planning boundaries in the new regulations inhibits the ability to develop consensus for future growth in Ocean County's portion of the Coastal zone. (6)

RESPONSE: Delineation of these coastal centers is for the purpose of permitting of CAFRA-regulated development. The Department expects that municipalities will examine the delineations in relation to their own planning efforts and development and redevelopment issues, and in many cases, seek a larger community development boundary and formal center designation by the State Planning Commission. This is a cooperative, comprehensive process in which the Department plays an active role.

382. COMMENT: The current site specific analysis, despite its cost, takes into consideration site conditions and not arbitrarily mapped planning zones. Site specific analysis, although it is often costly, employs professional engineers, geologists and environmental specialists to make decisions based on true site conditions and not arbitrarily mapped planning zones. Replacing this site-by-site analysis with a broad-brush approach is a fundamental problem. (105)

383. COMMENT: Site by site evaluation is more realistic and fair than Coastal Planning Area review. Coastal Planning Areas are too broad a classification. (28)

RESPONSE TO COMMENTS 382 AND 383: The adopted rules will still require a site-by-site analysis that identifies Special Areas as defined at N.J.A.C. 7:7E-3. However, the incorporation of Coastal Planning Areas reflects the Department's intent to support a comprehensive planning

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process in the coastal area. The Coastal Planning Areas identify distinct geographic, environmental and economic units in the CAFRA area and also provide a regional perspective and additional guidance for application of the State's coastal policies. By adopting Coastal Planning Areas, the Department is replacing the CAFRA growth areas that were developed in the 1970's.

384. COMMENT: The rules have missed the opportunity for coordination of CAFRA with the State Plan. This rule undermines the State Development and Redevelopment Plan by not linking the regulations with the planning areas of the State Development and Redevelopment Plan. The rule also fails to form an integrated growth management tool for shore communities. (67)

RESPONSE: The adopted rules are closely coordinated with the State Plan in the CAFRA area as provided for in the 1993 legislative amendments to the CAFRA statute. Under the adopted rules there will continue to be close coordination between the Department and State Planning Commission. The State Plan structure of Planning Areas and formally approved centers are the basis for the CAFRA Planning Map.

385. COMMENT: In many portions of the CAFRA region, the planning area designations do not represent existing land use patterns; this needs to be corrected. (85)

386. COMMENT: The Department should provide detailed information regarding the analysis used to determine Coastal Planning Area boundaries. (97)

RESPONSE TO COMMENTS 385 AND 386: The Department believes that the Coastal Planning Areas are representative of existing land use patterns, and that they are highly accurate. The Coastal Planning Areas are based on the planning areas established under the State Plan Resource Planning and Management Structure, which have been in place since 1992 and were reviewed by counties and municipalities. There is an amendment process available through the State Planning Rules (N.J.A.C. 17:32), and the State Planning Commission has recently completed a two-year cross-acceptance process that updated the delineations through review and recommendations by county and local governments. The accuracy of the Coastal Planning Areas is evidenced by the relatively minor number of changes requested by coastal counties and municipalities. Changes requested were limited to those based on new development patterns and regional infrastructure systems, which the cross-acceptance is designed to capture.

387. COMMENT: Prior to the beginning of cross-acceptance, the Borough of Tuckerton and the Townships of Little Egg Harbor and Eagleswood prepared a joint Center Designation which is currently under review by the Office of State Planning. This petition contains major planning area changes (Rural to Suburban) in the southern portion of Ocean County which directly correspond to the existing and future sewer service area depicted in the Wastewater Management Plan for Ocean County's Southern Planning Area, which is currently pending approval by the Department. Changing the Planning Area in this portion of the County is an unresolved cross-acceptance negotiation issue. The Department should either re-designate the Planning Area of this portion of the County consistent with the future sewer service area of the County's

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Wastewater Management Plan, or be prepared to amend the designation as soon as a decision is made on the issue by the State Planning Commission. Changing the Planning Area designation in this area would also address Eagleswood Township's concern over the extent of the Staffordville Village Center, since the area in question along Route 9 is designated for future sewer service in the Wastewater Management Plan. (6)

RESPONSE: The Department has participated in discussions on issues raised in the referenced petition with the Office of State Planning, Pinelands Commission, Ocean County and the municipalities. The Department also acknowledges the importance of resolving long-standing issues in the southern Ocean County region. Because the petition is currently under review by the Office of State Planning, the Department believes that continuing the coordinated, cooperative center planning process with all parties is the most effective strategy for resolving the commenter's concerns. After formal approval by the State Planning Commission, the Department will undertake an independent review of any changes to planning areas or center boundaries approved by the State Planning Commission for purposes of incorporating them into the CAFRA Planning Map, pursuant to N.J.A.C. 7:7E-5B.2.

388. COMMENT: The uncertainty about the Department retaining the municipalities "coastal center" designations and potentially altering the State Planning Commission's center boundaries can seriously affect the planning efforts and economic viability of the involved municipalities. It appears that the only way the Coastal Metropolitan and Suburban Planning Area municipalities can receive core or node designation is through the State Planning Commission. Unfortunately, at this time, there is no assurance that the State Planning Commission will include core and node designations as part of the Final State Development and Redevelopment Plan and even if the concepts are included in the plan there is no specific process for this designation to take place. Since there is no method at this time for municipalities in the Metropolitan and Suburban planning areas to officially designate cores and nodes, they are unable to take advantage of this beneficial new provision. If this is not feasible (availability of sector permits), the Department should devise a procedure for amending the CAFRA map and appendix to allow for new cores and nodes in the Coastal Metropolitan and Coastal Suburban Planning Areas. (98)

RESPONSE: The Department will review all coastal centers prior to their expiration to determine whether the original delineations remain appropriate after 5 years of county and municipal planning initiatives, and development and redevelopment activities. Generally, it is not the Department's intent to reduce impervious coverage in developed areas, and other areas deemed appropriate for development. The Department anticipates coordinating its review of the coastal centers with county and local governments. The boundary acceptance process at N.J.A.C. 7:7E-5B.2 will recognize State Planning Commission nodes and cores of and when approved by the State Planning Commission.

Under these rules, municipalities in the Coastal Metropolitan Planning Area receive high impervious cover limits (80 percent), regardless of whether a center, core or node is present. The State Planning Commission continues to process numerous center designation petitions that have been received during the cross-acceptance process. The Commission is currently developing a more refined process for endorsing county and municipal plans, since the existing center

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designation process does not offer an optimum comprehensive review of local planning and development documents and implementation mechanisms. The updated process considers a wider range of planning and development issues. Under the new process, centers would be delineated and endorsed, or designated, as part of a larger plan. The Department will be an active participant in this plan endorsement process.

The adopted Sector Permit would be available to any municipalities having a CAFRA center in any Coastal Planning Area, or having a CAFRA core or CAFRA node located in either the Coastal Metropolitan Planning Area or the Coastal Suburban Planning Area. The Department also notes that it is expanding the scope of the sector permit in the concurrent proposal, to provide that a proposed sector need only contain part of a CAFRA center, CAFRA core or CAFRA node.

389. COMMENT: Any inconsistencies between the Department and the State Planning Commission planning area and center boundaries have the potential to raise construction costs and, ultimately, business and housing costs through implementation of these rules. No acknowledgment of this potential is discussed in the economic impact analysis, which states that the rules may have limited localized economic impacts. In actuality, development in Ocean County will be profoundly affected by implementation of these rules. (109)

RESPONSE: The Coastal Zone Management Program is comprised of a set of laws for the protection and enhancement the coastal ecosystem. To ensure compliance and consistency with coastal policies, programs and regulations, the Department intends to review any new or changed boundaries of planning areas, centers, cores or nodes that the State Planning Commission formally approves to ensure that the new or changed boundaries are consistent with the purposes of the CAFRA statute and of the Coastal Zone Management rules. The Department believes that the comprehensive, cooperative planning process sponsored by the State Planning Commission will identify and resolve many critical issues before the Commission designates centers, and so the Department is likely to endorse the changes. As inconsistencies are not anticipated, the Department did not perform the suggested analysis.

390. COMMENT: It is the commenter's understanding that the coastal center boundaries for Cumberland County were drawn after a one day drive through the county. If in fact this is the method used in delineating Cumberland County's coastal centers, the proposed rule does not conform with the 1993 legislative amendments mandating that the new regulations be "closely coordinated" with the provisions of the State Development and Redevelopment Plan. The State Development and Redevelopment Plan requires that a center be designated only after careful review and approval by the State Planning Commission. Clearly, these provisions have not been met in the designation of coastal centers in Cumberland County. (35)

RESPONSE: Coastal center boundaries in Cumberland County were not based on a one day drive through the county. Rather, coastal center boundaries were drawn based on the Department's outreach efforts. In particular, the Department met with Cumberland County Planning officials on February 22, 1999 and with Commercial Township representatives on May 11, 1999. In general, the Department met with all county planning departments and any

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interested municipality. The Department considered centers identified in the 1992 State Plan and then delineated interim coastal centers. These will expire in five years in order to allow for more planning and review. Coastal center boundaries were based on the recognition of existing, compact, mixed-use development and included adjacent areas to accommodate imminent planned growth where there were not significant environmental features.

391. COMMENT: The City of Absecon requests that the Coastal Planning Area boundary in the northwest corner of the City be modified to expand the Coastal Metropolitan Planning Area into this northwest area. This portion of Absecon which is currently located within the Coastal Suburban Planning Area is an area already serviced by public sewer and predominantly developed with 10,000 square foot building lots. The current Coastal Suburban Planning Area boundary does not take into consideration the age-restricted multi-family complex and a 160-bed nursing facility. This northwest area is homogeneous with the adjoining area that is designated as a Coastal Metropolitan Planning Area, which is also sewered and developed at the same density. The City also requests an expansion of the Coastal Environmentally Sensitive Planning Area to be consistent with the actual coastal and freshwater wetlands lines as defined by state regulations. It is the City's understanding that the Coastal Planning Area boundary lines are taken from the State Plan and that the Department can only modify the boundary lines if the State Planning Commission modifies the planning area designations. It should be noted that during cross-acceptance, Atlantic County on behalf of Absecon, requested that the State Planning Commission modify the planning area designations within the City as described above. (97)

RESPONSE: The State Planning Commission amended the planning area boundaries of the Resource Planning and Management Map in the City of Absecon in November 1999 to incorporate the changes requested by the commenter. These amendments will not be formally adopted until adoption of the State Development and Redevelopment Plan in 2000. After that occurs, in accordance with newly adopted N.J.A.C. 7:27E5B.2, the Department will undertake an independent review of the modified planning area boundaries for incorporation into the CAFRA Planning Map.

392. COMMENT: Under the current rules, the City of Absecon is located within a Development Region. Typically, sites located within this region are classified as having a high development potential and low environmental sensitivity. Under this proposal, there is no coastal center designated for the City. The entire municipality should be classified as a coastal town, since it has a downtown mixture of a commercial "main street" and residential use to provide a "sense of place" in accordance with the State Development and Redevelopment Plan's criteria for "Communities of Place." Further, the City is bisected east/west by a rail line and state highway that provides a direct connection to Atlantic City, Atlantic County's only Urban Center. New Jersey Transit's train station in the center of the central business district provides ample commuter parking with a direct connection to the Atlantic City Convention Center. For these reasons, the City requests that the entire municipality be reclassified as a coastal town. (97)

RESPONSE: The Department believes that to delineate a coastal center for all of Absecon City

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would be inconsistent with the goals of the Coastal Planning Areas. Absecon City encompasses mostly Coastal Metropolitan Planning Areas that are adjacent to smaller Coastal Suburban and Coastal Environmentally Sensitive Planning Areas. The intent of the Coastal Environmentally Sensitive Planning Area is to accommodate growth in centers if there is no adjacent opportunity for development. The Department believes it would be inappropriate to encourage growth in the Coastal Environmentally Sensitive Planning Area of Absecon through a coastal center delineation when that planning area is adjacent to the Coastal Metropolitan Planning Area, which offers sufficient opportunity for growth accommodation. Furthermore, the Department did not delineate coastal centers in the Coastal Metropolitan Planning Area because under the adopted rule this area will receive an impervious cover limit of 80 percent, which is as high a limit as any coastal center would receive.

393. COMMENT: Most of the proposed site coverages for the listed town, village and hamlet centers in the Pinelands National Reserve meet the designation criteria in the Pinelands Comprehensive Management Plan for the areas of the Reserve in which they are located (no coastal urban or coastal regional centers are proposed in the Pinelands National Reserve). Proposed N.J.A.C. 7:7E-5B.2 should be amended to include language requiring that the Pinelands Commission concur with the type, location and boundary of any new center designated in Pinelands National Reserve beyond those in this proposal. Specifically, the rule should be amended as follows:

N.J.A.C. 7:7E-5B.2(b): “Whenever the State Planning Commission formally approves any new or changed Planning Area boundary, any new or changed community development boundary, or any new or changed core or node boundary, the Department shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of the Coastal Area Facility review Act, N.J.S.A. 13:19-1 et seq., and this chapter. For those new or changed community development boundaries or new or changed core or node boundaries which are located within the Pinelands National Reserve, the Department shall also, in consultation with the New Jersey Pinelands Commission, determine whether the boundaries are consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). within 90 calendar days after the date on which the State Planning Commission formally approves such boundary, the Department shall publish in the New Jersey Register a notice...”

Inclusion of this language will help to limit any unplanned impacts of the new centers. (53)

RESPONSE: The Department agrees with the clarification offered by the Pinelands Commission and has proposed to include similar language through an amendment contained in the concurrent rule proposal in this Register.

394. COMMENT: The Planning Area criteria are sufficiently similar to the equivalent Pinelands Comprehensive Management Plan management areas in the Pinelands National

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Reserve for comparison of the two areas. Although the Department, the Commission and the Office of State Planning have spent a great deal of time reviewing and refining the proposed boundaries for the planning areas, several inconsistencies remain. The commenter provided a table identifying 13 specific areas of inconsistency between Management Area designations under the Pinelands Comprehensive Management Plan and Planning Area designations under the State Plan.

Resolving these inconsistencies may require changes in the boundaries of the Pinelands Land Capability Map and/or the State Plan map. Commission approval is required for the former. Prior to adopting these rules, these inconsistencies need to be resolved and a decision made for each area as to whether this rule proposal should be changed to be consistent with the Pinelands Comprehensive Management Plan designation or whether the Pinelands Comprehensive Management Plan designation should be changed to be consistent with the rule. Until this is done, the two sets of boundaries will remain inconsistent. (53)

RESPONSE: The Department has reviewed the Pinelands Management Areas and the Coastal Planning Areas, which are based on the Planning Areas designated by the State Planning Commission in the State Plan, and believes that the best means of resolving any inconsistencies are the correlation activities contained in the Memorandum of Agreement by and between the New Jersey State Planning Commission and the New Jersey Pinelands Commission. This agreement is meant to ensure that the goals, objectives, and policies adopted by the New Jersey State Planning Commission pursuant to the State Planning Act, N.J.S.A. 52:18A-196 et seq., and the New Jersey Pinelands Commission pursuant to the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., are supportive of one another. This agreement was adopted by the agencies in April 1999. Any changes to the Planning Area boundaries by the State Planning Commission as a result of correlation will be addressed by the Department in accordance with N.J.A.C. 7:7E-5B.2.

395. COMMENT: Tightly-drawn centers, if they serve to focus development and lessen development pressures elsewhere, are consistent with the Pinelands Comprehensive Management Plan as they tend to average overall build-out. If drawn too large, however, centers have the potential to affect water quality and exceed the Pinelands Comprehensive Management Plan prescription on density for certain management areas (for example, Pinelands Village Management Areas). Alternatively, this issue could be addressed by controlling the impacts of nitrate/nitrogen on a regional basis by requiring the centers in the Coastal Fringe, Coastal Rural and Coastal Environmentally Sensitive Planning Areas to be served by small-scale, community wastewater systems, and/or by requiring that the concentration of the nitrate/nitrogen in the wastewater at the property line does not exceed 2 parts per million, and the treatment of wastewater occurs on-site or nearby (for example, by preventing any connection to the regional systems. (53)

RESPONSE: The Department recognizes that it may be appropriate to encourage the use of community wastewater disposal systems in the centers to address this issue and considers the impacts to ground water resources in its decision making processes. In the event that a CAFRA regulated development would be proposed for construction without the usage of a community

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wastewater disposal system, the 2 parts per million criterion would be a factor considered in the Department's deliberations on the permit application. However, it is anticipated that the majority of the developments that will be undertaken in the centers will be below the threshold that would necessitate a CAFRA permit application review (generally developments greater than 24 residential units or 50 or more parking spaces) and requiring only CAFRA regulated development to meet the 2 parts per million criterion will not ensure that the Pinelands Comprehensive Management Plan objectives would be achieved on a center-wide basis. It should be noted that CAFRA-regulated development within the Pinelands National Reserve must comply with all Special Area rules at N.J.A.C. 7:7E-3, including the Pinelands National Reserve and Pinelands Protection Area rule at N.J.A.C. 7:7E-3.44, regardless of the underlying Coastal Planning Area or Center boundary.

396. COMMENT: The rules eliminate protection of barrier islands. (112)

RESPONSE: Although the barrier islands have been identified as coastal centers, the protections afforded them by the special area rules at N.J.A.C. 7:7E-3, such as those regarding beaches, dunes, endangered and threatened species habitats, wetlands and wetlands buffers, are still applicable and will help ensure development is environmentally appropriate.

397. COMMENT: The effort to concentrate development in centers reduces the quality of life and is a bad premise. (66)

RESPONSE: Centers are compact forms of development that, compared to sprawl development, consume less land, deplete fewer natural resources, and are more efficient in the delivery of public services. The concept of centers and promoting development in them is a key principle of growth management initiatives in the State, including the coastal area.

398. COMMENT: In the proposed regulations, there is no structural relationship between centers across a region, and also between the individual centers and their environs. In addition, there is no planning process to assure that centers and environs are linked, as in the plan endorsement process adopted by the Office of State Planning. The result is a one-dimensional site-specific CAFRA regulatory program that lacks even procedural protections to promote balance and sound local and regional planning. (119)

399. COMMENT: The arbitrary decisions that all barrier islands are centers; the arbitrarily large initial coastal center designations based on wish lists rather than existing infrastructure and resource based planning, coupled with the failure to initiate real regional planning and control of infrastructure investments, will ultimately complete the destruction of property values and quality of life for residents and visitors alike. (5)

400. COMMENT: The number and size of centers in the CAFRA region appear to have been created based on political pressure and not based on what is actually on the ground. Since the arbitrary centers created for the 1997 Interested Party Review (see "Notice of Release and Request for Public Comment on Draft Rules Amending the Rules on Coastal Zone Management

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Concerning Intensity of Development” at 29 N.J.R. 5041(a), December 1, 1997), each successive draft contains more and bigger centers. This is an important example demonstrating why the Department should not have veto power over the State Planning Commission’s center designation, and why the State Planning Commission should continue to make decisions through the cross-acceptance process. Language should be incorporated clarifying the conditions that could trigger a Department veto of the State Planning Commission actions. This will eliminate any capricious and arbitrary differences between the Department and the State Planning Commission decisions. (10, 52)

RESPONSE TO COMMENTS 398 THROUGH 400: The 1997 Interested Party Review did not include coastal centers. Coastal centers were first delineated in the December 1998 proposal. In that proposal, the Department delineated coastal centers for those centers identified in the 1992 State Development and Redevelopment Plan. These centers were identified by local governments through the cross-acceptance process that was conducted by the Office of State Planning from 1988 through May 1992 with all municipalities and counties in the state. The Department then conducted an outreach effort to all coastal municipalities and counties asking them to identify other centers. A public notice was published with the December 7, 1998 rule proposal (See 30 N.J.R. 4167(a)) offering a process by which municipalities could identify to the State Planning Commission places that should be considered for delineation as coastal centers for purposes of the proposed rules. The Department also announced this opportunity in letters sent to municipalities in the CAFRA area, at four public hearings, and in press releases and other public statements.

The coastal centers were delineated based on significant public input and evolved from the Office of State Planning’s cross-acceptance process. The Department expects that municipalities will continue to examine the delineations in relation to their own planning efforts and development and redevelopment issues, and in many cases, seek a different community development boundary and formal center designation by the State Planning Commission. This is a cooperative, on-going comprehensive process in which the Department plays an active role.

The coastal centers in the August 1999 proposal reflected the Department’s outreach efforts subsequent to the 1998 proposal. The boundaries were based on existing, compact development, and when requested by local authorities, included additional areas to accommodate planned growth. However, in drawing boundaries, the Department sought to avoid including environmentally sensitive areas such as waters or wetlands as much as possible. The CAFRA center boundaries were based on a review of center boundaries delineated by the State Planning Commission, which the Department concluded were appropriate for CAFRA purposes.

New Jersey’s Coastal Zone Management Program is comprised of a set of laws (CAFRA, Waterfront Development Law and Wetlands Act of 1970) that empower the Department to protect and enhance the coastal ecosystem and protect the public health, safety and welfare. To ensure compliance and consistency with coastal policies, programs and regulations, the Department reviewed centers designated by the State Planning Commission, delineated interim coastal centers and will review any new or changed boundaries of planning areas, centers, cores, or nodes that the State Planning Commission formally approves. The Department has a responsibility to make an independent finding that the new or changed boundary is or is not consistent with the purposes of the CAFRA statute and of the Coastal Zone Management rules

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since it is specifically charged with coastal protection under CAFRA. However, the Department also believes that the comprehensive, cooperative planning process sponsored by the State Planning Commission will identify and resolve many critical issues prior to the Commission's designation of centers and Department's independent review.

The Department included coastal centers with boundaries the Department delineated, as well as CAFRA centers whose boundaries were drawn by the State Planning Commission and reviewed by the Department in order to recognize existing developed places and to steer development toward those areas rather than towards their environs. Since the 1992 State Development and Redevelopment Plan only contained seven designated centers this was necessary to coordinate the CAFRA rules with the goals of the State Development and Redevelopment Plan. As described above, the Department expects that municipalities will continue to examine the delineations in relation to their own planning efforts and development and redevelopment issues, and in many cases, seek a different community development boundary and formal center designation by the State Planning Commission. The coastal centers will expire in five years, thus the two separate processes for center delineation or designation will exist on an interim basis only. The State Planning Commission continues to process numerous center petitions and is refining its designation process to provide for a more comprehensive review and endorsement of local master plans. The Department will review each center formally approved by the State Planning Commission. The proposal accompanying this adoption includes standards at proposed N.J.A.C. 7:7E-5B.3 for the Department to reject or reject and revise a boundary formally approved by the State Planning Commission. The concurrent proposal in this Register proposes to insert language to the rule stating that the Department may reject or reject and revise a boundary if it finds that the boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be clearly inconsistent with the purposes of CAFRA or the Coastal Zone Management rules.

401. COMMENT: The proposal identifies far too many and too large centers which will allow urban-like development along the Delaware Bayshore. Equally disappointing is the failure of these rules to form any integrated growth management tool for shore communities. (67)

RESPONSE: Each coastal center delineated along the Delaware Bayshore is an historical village, and was delineated as either a coastal village or coastal hamlet. These villages and hamlets have been developed for years. The Department does not consider the impervious cover limits of 50 percent and 60 percent to be urban development. In addition, this rule does not require municipalities to change municipal zoning to conform with this higher impervious coverage. They may instead rely on their existing zoning and thus maintain historical development patterns.

402. COMMENT: Which state agency, the Department or State Planning Commission, is the lead agency for implementing and administering designation of the coastal centers, and what is the procedure? There is no reason for two separate coastal center-mapping processes, first by the Department and then modifications through the State Planning Commission. The State Planning Commission has not clearly defined the process of plan endorsement and what, if any, role center designations will have in this process. The CAFRA proposal does not identify the standards the

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Department will use in determining whether to accept a State Planning Commission center designation. Coastal centers should be a part of the State Development and Redevelopment Plan cross-acceptance process. (62)

RESPONSE: The Department is the lead agency for CAFRA center designation. To become a CAFRA center included in the CAFRA Planning Map, a municipality must first obtain formal center designation through the State Planning Commission. Then, as described above, the Department will conduct an independent review to make a finding that the new center or revised center boundary is or is not consistent with the purposes of the CAFRA statute and of the Coastal Zone Management rules. If a positive finding is made, the Department will incorporate the State Planning Commission's formally approved boundaries as its own Coastal Planning Area, or CAFRA center, CAFRA core, or CAFRA node boundary for purposes of determining impervious cover limits and vegetative cover percentages. If a positive finding is not made, the Department may reject or reject and revise the boundary to ensure consistency with the Coastal Zone Management rules. The proposal accompanying this adoption includes standards at proposed N.J.A.C. 7:7E-5B.3 for the Department to reject or reject and revise a boundary formally approved by the State Planning Commission.

403. COMMENT: The proposed CAFRA rules provide that the Department need not adopt the boundaries of designated centers as approved by the State Planning Commission. A reduction in the area of a center might reduce the impervious cover limit. Of particular concern is the Department's ability to retain a municipality's coastal center boundary or alter the State Planning Commission's center boundary and its impact on the planning efforts and economic viability of the involved municipalities. (98)

RESPONSE: The Department expects that it will only reject or reject and revise a center boundary approved by the State Planning Commission if the boundary is inconsistent with CAFRA or the Coastal Zone Management rules. The proposal accompanying this adoption includes standards at proposed N.J.A.C. 7:7E-5B.3 for the Department to reject or reject and revise a boundary formally approved by the State Planning Commission. The proposal states that the Department may reject or reject and revise a boundary if it finds that the boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be clearly inconsistent with the purposes of CAFRA or the Coastal Zone Management rules.

404. COMMENT: The fact that the barrier island coastal center boundaries do not have an expiration date is good. (105)

RESPONSE: The Department acknowledges this comment in support of the rule.

405. COMMENT: If coastal centers do not qualify or have funds to apply for official State Plan center designation, in five years when the coastal centers expire, the allowable percent of impervious cover afforded to coastal centers will be reduced to that of the underlying Coastal Planning Area(s) in which the community is located. (98)

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RESPONSE: Municipalities can participate in an interactive planning process with the Office of State Planning and the Department, as well as the county planning department and interested citizens. Through this interactive process, appropriate center boundaries can be developed. The Department has provided local grants to assist municipalities in this effort. Moreover, the Smart Growth Planning Grant Program announced by the Department of Community Affairs makes \$3,000,000 available for planning assistance to local government.

406. COMMENT: There is no provision at proposed N.J.A.C. 7:7E-5B.2(g) for modification of coastal centers provided in the regulations. The only way to modify boundaries of a coastal center within the five-year life of the center boundary would be either to go through the Office of State Planning center designation process (which may or may not be accepted by the Department) or seek a rule change through petitioning the Department which may or may not act on such a request. The net effect of this lack of procedure to amend a coastal center is that municipalities have no planning flexibility and no recourse except to rely on the attentiveness and fairness of Department. (79)

407. COMMENT: There is no process for modification of a coastal center boundary line except going to the State Planning Commission. The State Planning Commission does not have a simple process that can be used to make minor changes to the center boundaries. There should be a simple process allowing for the Department to provide changes to these lines, for instances where there have been errors or oversights. (30)

408. COMMENT: The technical standards are deeply flawed and will adversely affect the environment, economic viability and the quality of life for the 7500 residents of Absecon City. The centers do not reflect existing or planned development. The Department has not created any provision for modifying these boundaries after adoption of the rule proposed nor involved the municipality in the establishment of these boundary limits. (97)

RESPONSE TO COMMENTS 406 THROUGH 408: The Office of State Planning continues to refine the process for designating centers and endorsing plans based on input from county and municipal agencies as well as the public. As the process is updated, it will consider a wider range of planning and development issues. In addition, the Department will review these rules as part of the readoption process under Executive Order 66(1978), to determine if a different approach is warranted. The response to comments 398-400 describes the Department's method for delineating coastal centers in detail.

409. COMMENT: Proposed N.J.A.C. 7:7E-5B.2(g) indicates coastal center boundaries are good for five years from the effective date of this rule. This should be reduced to three years, which would give a community a chance to work with the State Planning Commission to create boundaries that are realistic and work for the community. (10, 52)

410. COMMENT: The time limit for the coastal center boundaries should be changed from five years to two years. This will give the municipalities and the county time to determine the coastal

center development boundaries through accepted planning techniques. (35)

RESPONSE TO COMMENTS 409 AND 410: The Department has not reduced the term of the coastal center boundaries because it believes that five years is a more appropriate limit that matches the strategic planning timeframe of many municipalities.

411. COMMENT: According to proposed N.J.A.C. 7:7E-5.2(g), the boundaries of the coastal centers for the barrier island communities do not expire five years from the effective date of the rule adoption. Why are the coastal centers for the barrier island communities exempt from this five-year timeframe? Just because the barrier island communities do not have the land needed to change the boundaries of their communities does not mean they should not have to participate in creating a community plan and submitting it for approval. (10, 52)

RESPONSE: The centers for the barrier island communities do not have a five year term because, unlike many coastal mainland communities, the barrier island centers are almost completely developed with very little area for future expansion, and their boundaries are unlikely to change. In contrast, coastal centers on the mainland have more flexibility on where growth should be directed through a planning process.

412. COMMENT: The expiration of the coastal regional center boundaries after five years as set forth at N.J.A.C. 7:7E-5B.2(g) makes long-term planning for the re-use of the Ciba Specialty Chemicals Corporation's large complex brownfield extremely difficult. The Ciba site is actively undergoing remediation that is unlikely to be concluded within the next five years. As a result, the site as a whole is not likely to be ready for redevelopment before the expiration of the coastal regional center designation. If a CAFRA center or sector permit is not approved before that expiration, the permissible impervious cover limit for the site will plummet from 80 percent to either 30 or 5 percent depending on the status of the sewer service. The potential for very low impervious coverage limits could thwart development plans that could otherwise be started in the short term. In order to implement development strategies for this site under a coherent long-term plan, there must be a mechanism to ensure that the ultimate impervious cover limit will be determined quickly. The mechanisms are in place in the form of CAFRA center designations and sector permits, but we urge the Department to put expedited procedures in place to accommodate this need. (17)

413. COMMENT: The center designation process that would affect developers of future office and industrial parks is too long and cumbersome; the Long Branch designation took the better part of two years. What is the basis for having a five-year limit on coastal centers? It appears as though the goal is to sharply restrict development thereafter. (85)

414. COMMENT: The rules include a provision for the expiration of all coastal centers, except for the barrier islands, in five years. From a planning and development perspective this is too limited. The planning and approval for development, particularly that envisioned for a center, is a long-term process, which cannot be started and completed within a five-year period. Given the history of the State Planning Commission, there is no reason to believe that the designation of

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centers will be a quick process, nor that there will even be a center designation process. Any community undertaking plans for future long-term development, including granting project approvals and obtaining financing for infrastructure, needs an assurance that the ability to develop will be there for longer than five years. To allow for long-term planning, the five-year expiration must be eliminated. The coastal centers should remain in place until they are formally replaced with a center designation through the process established in the State Development and Redevelopment Plan, ultimately resulting in a CAFRA center designation. (30)

415. COMMENT: The proposed rule should clearly state that if no adverse changes take place in a coastal center, and the municipality wants to retain the current coastal center boundary and classification, the coastal center boundary may be renewed when the CAFRA rule is revisited in five years. (98)

416. COMMENT: In order to avoid loss of interim centers, a municipality must proceed through the center designation process at the Office of State Planning. The Office of State Planning has said this process could take three to five years. Therefore, it is not clear that the interim centers will work. (2)

RESPONSE TO COMMENTS 412 THROUGH 416: The Department believes that five years is a substantial time period within which municipalities can consider coastal center boundaries in relation to local plans and development and redevelopment issues, and in which they can become CAFRA centers by obtaining community development boundaries approved by the State Planning Commission and then adopted by the Department. The Municipal Land Use Law requires municipalities to reexamine entire master plans every six years. Private sector interests should make municipal officials aware of short-term business needs and development and redevelopment concerns so that they can work cooperatively to address common interests. The boundaries of the CAFRA centers do not expire after five years. Therefore, a municipality desiring to retain an existing coastal center should undertake the planning process of the State Planning Commission as the necessary step toward obtaining a CAFRA center under these rules.

The Department recognizes that center designation, or endorsement of local plans, can be a time-consuming process. The time required to gain a designation will vary by municipality depending on many factors, such as the size of the center(s) and environmental constraints, as well as the complexity of growth management issues. The Department believes that the coordinated state planning process is the vehicle most appropriate to address these concerns, as there are many factors determining the appropriateness of a center boundary that are within the purview of other state agencies, including the Departments of Agriculture, Community Affairs and Transportation. The Long Branch center designation occurred in under six months, not two years, largely due to the City's comprehensive planning efforts. In addition, the Department will review these rules as part of the readoption process under Executive Order 66(1978) to determine if a different approach might be warranted based on its experience in implementing them.

417. COMMENT: The Department should recognize existing centers of development that may not be in the traditional towns but that have developed as nodes or clusters over the years. (85)

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RESPONSE: The coastal centers delineated in the rule do include existing places that are not traditional centers. The Department anticipates that additional places of non-center-based development in the Coastal Metropolitan and Suburban Planning Areas only as well as center-based places, will be included on the CAFRA Planning Map in the future as centers, cores and nodes are included in the local plans endorsed by the State Planning Commission. Changes in planning area boundaries and centers may be initiated by municipalities through the State Planning Commission. Under the adopted rule, the Department will incorporate changes approved by the State Planning Commission that the Department determines are consistent with the purposes of CAFRA and the Coastal Zone Management rules. The proposal accompanying this adoption includes standards at proposed N.J.A.C. 7:7E-5B.3 for the Department to reject or reject and revise a boundary formally approved by the State Planning Commission.

418. COMMENT: The proposal does not provide the specific statutory authority which enables the Department to designate regulatory centers. On what legal basis were the centers designated? Further, the proposal does not include a technical and factual basis to support the designation of centers, in terms of location, number or size. Department regulations are required to have a factual basis articulated in the proposal (119)

RESPONSE: The Department delineated coastal centers based on the CAFRA goals of encouraging compact development and on the 1993 CAFRA legislative amendments requiring close coordination between the CAFRA rules and the provisions of the State Development and Redevelopment Plan. These factual and legal basis were stated in the proposal. Most municipalities with coastal centers were identified as potential centers in the 1992 State Development and Redevelopment Plan. Without coastal centers, the goal of compact development could not be realized throughout the coastal zone.

419. COMMENT: Using the State Planning Commission boundary for patterns of development growth and concentration does not truly reflect the extent of planned uses many municipalities have been considering. Business development in Cumberland County, specifically Maurice River Township, has been the main thrust of discussions concerning the tax base and ratables. Providing additional open space and confining the opportunities to limited areas will not promote additional business interest. These areas should have local input and discussions with business leaders to determine the coastal center boundaries. For example, the Leesburg/Dorchester coastal center has been limited to the existing village area. Since this coastal center has been drawn conservatively to reflect existing development, there are no additional areas in the centers that could accommodate the planned industrial and commercial developments that are being considered for the outlying areas adjacent to these towns. Under the proposed rules, no new development could occur, and as a result, businesses may look at other options outside of New Jersey. (12)

RESPONSE: The Department delineated most of the boundaries of the coastal centers in consultation with county and municipal governments. The coastal centers include both developed and undeveloped lands. Developments that are large enough to require a CAFRA permit are not prohibited in any Coastal Planning Area or center; however different impervious

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cover and vegetative cover limitations will apply. The Department expects that municipalities will examine the delineations in relation to their own planning efforts and development and redevelopment issues, and, in some cases, seek a larger community development boundary and formal center designation by the State Planning Commission. This is a cooperative, comprehensive process in which the Department plays an active role. This is the appropriate forum for discussion of issues like open space, ratables and growth accommodation. Maurice River is currently engaged in the center designation process with the State Planning Commission and the Department. Please see the response to comments 513 through 515 concerning the coastal center delineations for Leesburg and Dorchester.

420. COMMENT: Until the following basic questions can be answered for all coastal centers both individually and cumulatively, the proposal should be withdrawn. How much land area is located within the coastal centers? How much development could occur within the coastal centers? Is the magnitude and pattern of growth consistent with that of the State Development and Redevelopment Plan or local master plans? What are the cumulative fiscal and environmental impacts of this growth? Is the water supply, wastewater, roads and school infrastructure adequate to serve this growth in the coastal centers? (119)

RESPONSE: The coastal centers are interim centers that will expire in five years. These issues are best addressed working with the Office of State Planning to make changes in planning area boundaries and centers. The boundaries of coastal centers in the Coastal Rural and Environmentally Sensitive Planning Areas were drawn more tightly around existing development than in the other Coastal Planning Areas.

421. COMMENT: What is the basis for the coastal center boundaries? There is undue reliance on using roads as boundaries. This is inherently at odds with how development occurs; at four corners of an intersection and on both sides of a road. The use of roads as boundaries exacerbates the “windfalls and wipeouts” tension associated with any growth boundary. (62)

422. COMMENT: The Department has proposed coastal centers and has drawn boundaries of each of these centers, yet there is no information provided as to the criteria used to determine the location of these boundaries. The Department must provide detailed information on the mapping criteria used. (30)

423. COMMENT: Detailed information concerning the analysis the Department used in determining coastal center boundaries should be provided to the public. (106)

RESPONSE COMMENTS 421 THROUGH 423: The coastal center boundaries were drawn so that the rules, which are intended to concentrate development, promote efficient use of infrastructure, prevent sprawl, and protect agricultural and environmentally sensitive land, could be implemented in municipalities that had not completed center-designation through the State Planning Commission. The Department expects that municipalities will examine the coastal centers in relation to their master plans and in some cases seek different development boundaries from the State Planning Commission. However, these center boundaries will expire in five years

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in recognition of ongoing planning processes.

As explained in the proposal summary at 31 N.J.R. 2059, the Department established a protocol for mapping the boundaries of the coastal centers. For the coastal centers on barrier islands and on oceanfront spits and peninsulas, the boundaries were drawn largely coincident with the boundaries of the municipalities in which the centers are located, except, for instance, where bay islands or large tracts of publicly owned land formed a more appropriate boundary. For the coastal centers on the mainland, the Department delineated boundaries that recognized as much compact development and mixed use development as possible, including buildings, pavement, and other structures with impervious surfaces. In the Coastal Rural and the Coastal Environmentally Sensitive Planning Areas, a less developed area adjacent to a compact development was included within a coastal center to accommodate growth when requested by municipal or county officials, based on their representations that development was planned for the area in the next several years. The Department included such areas within coastal centers when there was evidence of imminent development, such as existing sewer lines. The Department also included larger growth areas in coastal centers in the Coastal Suburban and the Coastal Fringe Planning Areas.

The Department avoided including Special Areas as defined in the Coastal Zone Management rules and public open space within the boundaries of the coastal centers where feasible. In some cases, Special Areas, such as wetlands, are within coastal center boundaries because the boundaries were drawn to include significant existing development adjacent to or around the wetlands or other Special Areas. The Department emphasizes, however, that the Special Area rules in N.J.A.C. 7:7E-3 apply to all Special Areas, including those located within coastal centers.

N.J.A.C. 7:7E-5B.3 Impervious cover limits for a site in the CAFRA area

424. COMMENT: For sites with a three percent impervious cover requirement, it will be impossible for a proposed development to conform with the Department's impervious cover requirement and also conform with the Municipal Land Use Law and local ordinances. (25)

RESPONSE: Both the Department's impervious cover limits and municipal zoning ordinances set maximum impervious coverage limits for a proposed development site. A development is not required to reach these maximum impervious coverage limits for a particular site, but rather cannot exceed these limits. Therefore, a proposed development with impervious coverage less than that allowed by the Department or municipal zoning ordinance is acceptable and would conform to these maximum impervious coverage limits.

425. COMMENT: The proposed rules do not sufficiently allow expansion out from existing centers. The maximum impervious coverage provisions of the proposed rule allowing between 70 and 90 percent impervious coverage in designated centers and in the Coastal Metropolitan Planning Area compare favorably with the existing rule for maximum impervious coverage for "special urban areas" and sites achieving a "high intensity of development." However, whereas the existing rule presently permits 40 percent impervious coverage (under the existing definition of impervious coverage), the new requirement in the Coastal Suburban Planning Area has been

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reduced to 30 percent with a more restrictive definition of impervious coverage. The rationale for this change is not put forth in the rule and there appears to be no scientific rationale, but rather the intent is to further restrict development outside of centers. (79)

426. COMMENT: In the Coastal Suburban Planning Area, which is most of Ocean County, the rules set 30 percent impervious cover. The City of Los Angeles is about 37 percent impervious, which results in tremendous densities. More growth can be fit into Ocean County than is currently projected by a factor of two. (112)

RESPONSE TO COMMENTS 425 AND 426: Establishing impervious cover limits controls the amount of development that can occur in an area. By establishing higher impervious limits in CAFRA centers, cores and nodes, the Department intends to encourage development to be focused in these areas. Conversely, the relatively low impervious cover limits in the Coastal Rural and Coastal Environmentally Sensitive Planning Areas will discourage large-scale, CAFRA-regulated development in those areas. The 30 percent impervious cover standard (depending on house size, length/width of driveway and other appurtenant structures) results in approximately one-half acre zoning for residential style developments. When this development is combined with projects that fall below the regulatory threshold of CAFRA (e.g. 25 residential units or 50 parking spaces in most areas) and which may have higher impervious coverage, the resultant mixture will provide for development densities that are consistent with the attributes of the Coastal Suburban Planning Area where new development would be an outgrowth of expanding infrastructure from the Coastal Metropolitan Planning Area designed in a manner which protects coastal resources through open space conservation and buffers. Examples of other development densities at various impervious cover limits are: three percent impervious cover, 6-10 acre zoning; five percent impervious cover, 3-5 acre zoning; 50 percent impervious cover, 0.25 acre zoning,

427. COMMENT: The proposal provides no scientific rationale for the specific impervious coverage limits included in Table H. The summary explains that the impervious cover numbers are an indicator of environmental impact but provides no correlation between these numbers and any impact at all. Further, the impervious cover numbers used as indicators are based on a watershed area, not applied site by site. Thus the use of these impervious cover numbers is not explained or justified. The proposal needs to clarify how these specific numbers were derived and what their implementation will accomplish. (30)

428. COMMENT: It is very hard to say whether one agrees or disagrees with the impervious cover number, not knowing how that impervious cover number was derived. Certainly the change of definition changes how one views the regulations (13)

429. COMMENT: Under the proposed regulations, the impervious cover of 80 percent is permitted in the Coastal Metropolitan Planning Area; impervious coverage of 30 percent is allowed in parts of the Coastal Suburban Planning Area with sewer; impervious cover of five percent is allowed in parts of the Coastal Suburban Planning Area without sewer; impervious cover of five percent is allowed in the Coastal Fringe Planning Area, and only impervious cover

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of three percent is allowed in the Rural and Environmentally Sensitive Planning Areas. The commenter questions how these coverage limits were created and assigned. The Department has failed to disclose what criteria it utilized in assigning these unreasonably low limits. Nor has the Department revealed how these limits correlate (if indeed they do) with accommodation of projected growth or environmental protection. The limits are unreasonable, and lack any nexus to rational planning. (57)

430. COMMENT: The proposed impervious cover limits have no basis and allow for excessive growth. They are not technically or legally linked to compliance with water quality standards at N.J.A.C. 7:9B-1 et seq. (119)

431. COMMENT: The Cape May County Planning Board opposes the proposed impervious coverage percentages in the Coastal Rural and Environmentally Sensitive Planning Areas. These percentages are unrealistic and these impervious cover percentages have nothing to do with the State Development and Redevelopment Plan. They were generated by the Department as part of these regulations. (104).

432. COMMENT: Most of Dennis Township will be in the Coastal Rural or Environmentally Sensitive Planning Areas. The rules will allow only three percent impervious coverage on a lot, after all of the wetlands, buffers and other special areas are deducted. This is extremely restrictive. This would barely allow an entrance road of minimal length and parking to support a building, and would require a huge parcel of ground. The commenter has opposed the impervious coverage limits on the Coastal Suburban, Rural and Environmentally Sensitive Planning Areas. (116)

433: COMMENT: Detailed information concerning the analysis the Department used in determining impervious cover limits should be provided to the public. (106)

434. COMMENT: The Department should provide detailed information on the analysis used to determine the impervious cover limits for the Coastal Planning Areas. (97)

RESPONSE TO COMMENTS 427 THROUGH 434: The impervious cover limits established in the rule will enable the Department to achieve a number of longstanding policy objectives in the CAFRA area, including protection of environmentally sensitive areas, agricultural lands and open space, more efficient use of infrastructure, concentration of development, and protection of water and air sheds. Further, the coverage limits will enable the Department to meet its responsibility to closely coordinate the CAFRA rules with the State Development and Redevelopment Plan, as set forth in the 1993 legislative amendments to CAFRA. The Department used the State Plan Resource Planning and Management Map as a basis for the CAFRA Planning Map that identified the various Coastal Planning Areas. The Department based the allowable impervious cover limits for each Coastal Planning Area on the attributes of those areas.

The Department has historically used impervious cover as a way to ensure that CAFRA regulated development in the coastal zone is protective of natural resources and the health and

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welfare of our citizens. The prior coverages ranged from three percent to 90 percent, which is the same range established in this rule. The adopted rule will continue this practice, but will apply impervious cover limits in clearly delineated areas. This will facilitate planning and design decisions for developers, streamline the permit process for the Department, limit development in those areas that are the most environmentally sensitive and fragile and encourage development of compatible land uses within a comprehensive environmental design strategy. In developing this impervious cover approach, the Department reviewed many studies, including “Impervious Surface Coverage: The Emergence of a Key Environmental Indicator” (Arnold C. Gibbons, 1996, Journal of the American Planning Association) and “The Importance of Imperviousness” (T.R. Schuler, 1994, Watershed Protection Techniques). These studies conclude that as impervious cover increases, degradation of surface and ground water resources increases. While the studies reviewed describe impervious cover impacts on a regional or watershed-wide basis, the Department’s use of impervious cover limits on a site by site basis within a designated area, when considered collectively, will result in regional protections. The Department believes that the impervious cover limits in Table H represent a reasonable approach to fulfilling its obligation to closely coordinate these rules with the State Plan (as required in the 1993 amendments to CAFRA) and to protect the State’s coastal resources from inappropriate development, to steer development into appropriate areas, and to promote air and water quality in the coastal zone. In addition, the water quality and air quality resource rules at N.J.A.C. 7:7E-8.4 and 8.10, respectively, will continue to protect water quality and air quality.

435. COMMENT: For an urban center to have 90 percent impervious cover is excessive. Manhattan Island is about 80 percent impervious. (112)

RESPONSE: The only urban center in the CAFRA area is Atlantic City, which already has many areas with existing impervious cover ranging up to 90 percent. Because of the highly developed nature of Atlantic City, and the Department’s desire to facilitate redevelopment in Atlantic City, the 90 percent impervious cover limit requirement of this rule is not excessive.

436. COMMENT: The proposal does not identify the legal authority for the various impervious cover limits allowed (79)

RESPONSE: This impervious coverage range was adopted by the Department in accordance with the Administrative Procedure Act and has been operative since the Coastal Zone Management rules were originally adopted in 1978.

437. COMMENT: The commenter is very impressed with the regulations because the permeability/non-permeability factor deals with non-point sources of pollution very strongly. (44)

RESPONSE: The Department acknowledges this comment in support of the rule.

438. COMMENT: The impervious cover limits will only encourage the continued proliferation of 24 one-acre lot subdivisions. (104)

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RESPONSE: Any change in the scale of development that is regulated under CAFRA must come through legislation, as the 24 unit threshold provision is in the CAFRA statute. The Department does not agree that the use of Coastal Planning Areas and the establishment of impervious cover limits within the Coastal Planning Areas as provided in these rules, will exacerbate the 24 unit “loophole” by encouraging more development in the coastal zone that is outside the jurisdiction of CAFRA than is currently experienced. This is because the prior rules in subchapter 5 also had established impervious cover limits ranging from three to 90 percent.

439. COMMENT: The proposed impervious coverage percentages contained in Table H are much too high. Translating the 50 percent and 60 percent impervious cover for villages and hamlets to a density of four or five houses per acre would result in densities that would destroy the nature of villages and hamlets delineated in the proposal. The impervious cover limit should be no more than 30 percent, which would allow building on lots of one-half acre. This would conform to the development pattern that now exists in the villages and hamlets in Salem County (8, 23, 35, 36, 67, 70, 80, 84, 88, 94)

RESPONSE: The commenters are correct that the 50 percent to 60 percent impervious limits will result in approximately four to five single-family residential units per acre. However, the rule establishes maximum impervious cover limits for each Coastal Planning Area. Local governments can establish lower impervious cover limits than those provided in this rule if they believe the lower limits will better serve their community and local planning goals. The CAFRA statute at N.J.S.A. 13:19-19 states that the provisions of the act shall be regarded as supplemental and in addition to powers conferred by other laws including municipal zoning authority. The Department noted in the proposal summary that municipalities can establish and apply more stringent impervious cover limits than those contained in these rules. The Department has included a new provision at N.J.A.C. 7:7E-1.5(g) to reaffirm this municipal prerogative in the concurrent proposal published elsewhere in this issue of the Register.

440. COMMENT: The commenter objects to the broad-brush impervious coverage limitations that are being placed on the Borough of Seaside Heights. These impervious cover limits are in direct opposition to good planning practices. Traditional planning in New Jersey relies upon overall master planning efforts that examine a municipality as a whole, and assign various density requirements based on appropriate land usage. The land use element of the master plan generates an overall vision from which a land use ordinance develops standards for zoning restrictions in specific districts. Varying densities are assigned as appropriate to the use. Traditionally, densities range from low density residential to high density commercial. Economics also play a part in these density assignments. (47, 54)

441. COMMENT: The utilization of a single standard set at 70 percent for maximum impervious coverage throughout the Borough of Surf City raises serious concerns. While the 70 percent maximum impervious coverage standard would appear to be appropriate for the more intensely developed portions of the Borough, particularly commercial areas, such a standard would be inappropriate for major portions of the residential areas of the Borough. While the

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stated purposes of the proposed rule indicate that local zoning is not superceded by the proposed regulations, a certain legal decision raises considerable concern on the part of the Borough that this may not always be the case. Specifically, Appellate Division Opinion A7135-96T2, John Tumino and John Baratta vs. Long Beach Township and Long Beach Township Docks and Wharves Committee may leave the door open to a future challenge to a municipality's right to restrict development intensity in the case where State Regulations clearly permit such development. The decision contains specific references to the Coastal Policies and Rules and the Department's role in arbitrating between "competing interests". The decision the Appellate Division overturned was the Docks and Wharves Committee's denial of the plaintiff's permit "because we conclude that the coastal zone management rules establish a comprehensive scheme governing the siting and design of recreational docks...". The Borough does not believe it is too far of a stretch that a court may some day take it one step further to conclude that the coastal management rules establish a comprehensive planning scheme governing the siting and design of development within the Borough. The proposed rules should more clearly and unequivocally put forth language preserving a municipality's right to enact zoning and other development regulations in excess of the requirements of the coastal rules. (79)

442. COMMENT: It should be very clearly stated in the final rules that the impervious cover limits permitted under CAFRA will set maximum limits for State permitting purposes and that they do not preclude municipalities from instituting locally accepted coverage numbers in their planning and development programs (6)

443. COMMENT: Traditionally, municipal zoning controls the density of development, with CAFRA review and approval needed for development over a defined threshold. There seems to be some confusion about this issue, which should be clarified, in the Department's informational handouts. The CAFRA coverage standards are maximum thresholds; in other words, that does not mean that municipalities are mandated to meet those thresholds as part of local zoning. (62)

RESPONSE TO COMMENTS 440 THROUGH 443: In the adopted rules, the Department establishes upper limits on impervious cover based on location in a coastal center, CAFRA center, core or node, or in a Coastal Planning Area. This does not preclude local government agencies from requiring lower impervious cover limits to achieve local planning goals. The CAFRA statute states that the provisions of the act shall be regarded as supplemental and in addition to powers conferred by other laws including municipal zoning authority. However, in order to make this clear in the rules, the Department is including a provision in the concurrent proposal at N.J.A.C. 7:7E-5.1(g), that states that a municipality may impose by ordinance more stringent impervious cover or density requirements than those required by this rule. The Department believes the adopted rules promote sound regional planning by implementing impervious cover limits that take existing development and infrastructure, and the environmental needs of the region into consideration.

444. COMMENT: The Department is aware of numerous studies that suggest that water quality impairment occurs when approximately eight through 10 percent of a watershed is impervious cover. At 25 percent impervious, these impairments are irreversible. Yet the proposal would

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allow 30 percent in the Coastal Suburban Planning Area, and even greater levels in centers, with no consideration of regional or cumulative water quality impacts. (119)

445. COMMENT: Evidently the Department found a clear link between density of development, contamination at outfalls and bacteria counts at shellfish beds during storm events and wet weather conditions. At a time the State is trying to move to watershed-based planning and management, the impervious limits in the proposed regulations do not seem sensitive to the overall goals of protecting the State's water resources. In addition, the high impervious cover limit in the Coastal Metropolitan Planning Area will be used by developers to attempt to exceed local zoning. (10, 117)

446. COMMENT: There is no evidence of coordination with this rule and the watershed approach to planning and regulation. (67)

RESPONSE TO COMMENTS 444 THROUGH 446: The Department did consider regional and cumulative water quality impacts in establishing the impervious cover limits. The impervious cover limits recognize already existing patterns of development and balance these with resource protection. Further, the limits start at three percent, which is below the limits cited as causing water quality impairment. Also, development approved under these rules would be required to use best management practices to treat stormwater prior to discharge into a wetland or waterway. The accompanying rule proposal found in this New Jersey Register at proposed N.J.A.C. 7:7E-5.1(g) clarifies that municipalities may establish more restrictive impervious cover limits.

447. COMMENT: There has been no rationale given for where these impervious cover limits came from. How did you go from 50 percent to 80 percent in the Coastal Metropolitan Planning Area? How is it that 30 percent was proposed for the Coastal Suburban Planning Area in the 1998 proposal and now in this proposal the limit is 30 percent if there are sewers, but only five percent if there are no sewers? What is the rationale for the one percent in the 1998 proposal or the three percent in the 1998 proposal within the Coastal Rural and Environmentally Sensitive Planning Areas, which is what Cape May County is predominantly? Three percent cover translates to approximately one home per four or five acres, or five acre zoning in that area, assuming it is buildable. The impervious cover limits appear arbitrary and not based on any studies. (57)

448. COMMENT: Areas outside of a designated sewer service area but located within the Coastal Suburban Planning Area under this proposal have only a five percent impervious cover limit. If a project is located outside of a sewer service area, the applicant has the right to apply for a Water Quality Management Plan Amendment or to provide an on-site septic system as long as the requirements of N.J.A.C. 7:9A, Standards for Individual Subsurface Sewage Disposal Systems, are met. The Department has stated that it has determined that a five percent impervious cover limit for sites in the Coastal Suburban Planning Area will accommodate many residential subdivisions, but no supporting documentation is provided. How did the Department arrive at this reduction from 30 percent to five percent for impervious cover? Under the State Development and Redevelopment Plan, development is acceptable. A five percent limit will

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hardly accommodate commercial development. For example, even at 30 percent coverage, a 12,000 square foot building with 60 parking spaces will not fit on a three-acre lot. (50)

RESPONSE TO COMMENTS 447 AND 448: The rationale for the impervious cover limits is provided in response to comments 427 through 434 above. The Department determined that the increase from 50 percent to 80 percent in the Coastal Metropolitan Planning Area better recognized existing development levels and would serve to encourage development in these areas pursuant to the Department's goal of concentrating development in already developed areas. The five percent impervious cover limit for areas outside of sewer service areas in the Coastal Suburban Planning Area has been established to reflect the lack of sewer in parts of the planning area, and the planning and public input inherent in adopting a water quality management plan calling for sewerage in an area. If an area is identified as acceptable for sewers, even in cases where they are not yet in place, the impervious cover limit would increase to 30 percent when the area is approved for sewer service. The lower impervious cover limits in the Coastal Rural and Environmentally Sensitive Planning Areas are intended to protect the agricultural and natural resources and open space in those areas, taking into consideration existing development and smaller development not subject to review under CAFRA. These lower limits are the same as the lowest limits applied under the prior rules in subchapter 5 adopted in 1978.

449. COMMENT: It is manifestly unfair for the Department to take a position limiting coverage to five percent in some areas and less than five percent in others. There is no basis to do so especially for runoff and septic. There is a statewide regulation requiring minimum lot sizes for septic systems (35,000 ft²). Most of the zoning in the area that the Department is dealing with is approximately one acre lots, which is more than the minimum size required for a septic system. Therefore the Department should delete the five percent coverage limitation or less, and increase the coverage to at least 30 percent. (102)

RESPONSE: To protect regional water resources it is necessary to establish more stringent impervious cover limits in those Coastal Planning Areas that surround other Coastal Planning Areas or centers where higher density development is allowed. In addition, as explained in response to previous comments, the impervious cover limits allow the Department to meet a number of policy objectives, not all of which target water resource protection, such as open space and habitat protection, protection of environmentally sensitive areas, air quality, more efficient use of infrastructure and concentrating development in the most appropriate areas. The basis for using impervious cover as a means to protect water quality is provided in response to comments 427 through 434 above.

450. COMMENT: The Cape May Marlin and Tuna Club site is not within the Cape May City coastal center. Therefore it is in the Coastal Environmentally Sensitive Planning Area with a three percent impervious cover limit. The three percent cap has the effect of zoning property into inutility. To achieve three percent impervious cover would mean most of Cape May City would be taken by the State, since permits cannot be granted for more than three percent coverage and based on existing lot sizes. Right now the Club property is basically 100 percent

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coverage under the definitions of pervious and impervious. The City requires off-street parking. It requires paving of the off-street parking areas. In the Club's situation, the whole lot is basically parking and building and there will be nothing allowed if the proposed rule is not changed. Is there any exemption for preexisting conditions? At the least, sites already developed under existing and prior laws and regulations should be grandfathered and exempt from any State controls. Just as municipalities cannot zone property into inutility, the State should not, through the use of pervious and impervious area definitions, make property undevelopable. (25)

RESPONSE: Most of Cape May City is in the coastal town center, which has an impervious cover limit of 70 percent. The City of Cape May applied to the Office of State Planning for designation as a town. Since that designation was approved on October 27, 1999, the Department will undertake an independent review of the Community Development Boundary for incorporation into the CAFRA Planning Map within 90 days of the effective date of these rules in accordance with newly adopted N.J.A.C. 7:7E-5B.2. In addition, new N.J.A.C. 7:7-1.10(c) will enable the Department to relax substantive standards of the Coastal Zone Management rules should an applicant demonstrate that an extraordinary hardship exists that would preclude the property owner from realizing a minimum beneficial use of the property in accordance with constitutional standards. For previously developed sites such as the Cape May Tuna and Marlin Club property, the rules allow redevelopment. For redevelopment of a site in the Coastal Environmentally Sensitive Planning Area, the impervious cover limit would be equal to the amount of buildings, asphalt and concrete pavement legally existing on site at the time an application is submitted to the Department. Within a coastal or CAFRA town center, the impervious cover limit would be either 70 percent or the amount of legal existing impervious cover located on the site, whichever is higher.

451. COMMENT: The increase between the 1998 and the 1999 proposals of from one percent to three percent means nothing on the barrier islands or the environmentally sensitive areas. In Special Areas, such as overwash erosion hazard areas and coastal high hazard areas, what does that increase mean for an expansion of existing development? What if someone has a small cottage in an erosion hazard area or other hazard area and wants to expand it? If they want to add a garage or a family room, is the Department going to tell them that they are over the three percent impervious coverage and their permit is denied? (105)

452. COMMENT: The impervious cover limit was raised from one percent to three percent between the 1998 and 1999 proposals. That is not a big improvement. It allows a person to build a 10 x 10 foot outhouse rather than a 10 x 4 foot outhouse. These rules as applied to an environmentally sensitive high hazard area are far too restrictive. The Department is taking away more than property rights, it is taking away our quality of life. (59)

RESPONSE TO COMMENTS 451 AND 452: The impervious cover limits do not apply to the construction of a single family home or duplex or to an addition to a single family home or duplex, provided the single family home or duplex is not part of a larger development. Moreover, new N.J.A.C. 7:7-1.10 will enable the Department to relax any of the substantive

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standards of the Coastal Zone Management rules when their strict application would result in an extraordinary hardship to a property owner.

453. COMMENT: Impervious cover limits in the CAFRA area should be changed to reflect the impact in each type of Coastal Planning Area. The impervious cover limits should revert to the percentages in the 1997 IPR. The Coastal Rural and Environmentally Sensitive Planning Areas should be treated differently from the other Coastal Planning Areas. The Coastal Rural Planning Area should accommodate minimal development (one percent impervious cover) while the Coastal Environmentally Sensitive Planning Area should discourage any development and protect the environmentally sensitive areas as it was created to do (0.3 percent impervious cover). Research has shown that “the threshold of significant impact may be as low as a watershed imperviousness of 4 percent for some highly sensitive species (Community and Environmental Defense Services).” If this is the case then it is imperative that the impervious covers for the Coastal Rural and Environmentally Sensitive Planning Areas be less than that threshold, with that for the Coastal Environmentally Sensitive Planning Area being considerably less.

Nutrient loads to local waterways can increase 12-fold by converting forest to homes on one acre lots. Increased nutrient loads can lead to dramatic changes in algal populations, in turn leading to the “choking” or “suffocating” of local waterways and aquatic organisms. Intense development and habitat loss can create migration barriers. Along the coast, shorebirds such as herons and egrets nest in colonies and need large undisturbed areas for nesting and breeding. The Barnegat Bay Estuary Program Water Resources Group has done studies in the Barnegat Bay Watershed which have shown the direct correlation between increased development and decreased water quality and stream base flow depletion. The Rutgers University Center for Remote Sensing and Spatial Analysis and the Barnegat Bay Estuary Program Habitat Loss and Alteration group have shown a direct correlation between increased development and a decrease in wildlife habitat, and thus a decrease in wildlife diversity. A Barnegat Bay Characterization study has been compiled with all the scientific data required to base sound policy upon for the watershed.

In justifying this recommendation that the amount of impervious coverage, be decreased, the commenters quote the proposal summary: “As the percentage of impervious cover on a site increases from development, the velocity and volume of surface runoff also increase, causing erosion, a decrease in water infiltration into the soil preventing recharge, and the sweeping of land deposited pollutants into surface waters.” The commenters that the “best management practices are actually policies that avoid creating impacts in the first place, by controlling the density and location of development.” These rules, as proposed, do no more to support this goal than the current regulations. The Department should revisit the impervious cover numbers. These numbers increased the allowable impervious cover and should be lowered. (10, 52)

454. COMMENT: The protections for the Coastal Rural and Environmentally Sensitive Planning Areas are too weak, ten times weaker than the first version, and should be set at 0.3 percent impervious cover. That will reduce densities in the remaining rural parts of the coast. (110)

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455. COMMENT: The base impervious cover limits to protect water quality in the Coastal Suburban Planning Area is 30 percent. One study talks about degradation of an area at over 10 percent impervious cover. Above 30 percent impervious cover, there is an urban landscape where water quality is gone, yet under the proposed CAFRA rules the Coastal Suburban Planning Area, which is most of the vacant land in Ocean County, will be allowed to become urbanized. Plus, centers will be allowed 80 percent impervious cover and greater. The only area with the kind of protection that there should be is in the Coastal Rural and Environmentally Sensitive Planning Areas. However, impervious cover there, at three percent, is ten times what was originally suggested in the 1997 interested party review document. That translates to two to three acre zoning, especially if people share driveways. (112)

456. COMMENT: This rule fails to protect the undeveloped and environmentally sensitive areas because the change from the 1997 Interested Party Review to this proposal in impervious cover 0.3 percent to three percent results in a tenfold increase in development that can occur. (95)

457. COMMENT: The impervious surface cover amount allowed in the Coastal Rural and Environmentally Sensitive Planning Areas is egregious. It has expanded since the 1998 proposal. In these areas, should be limited structures and surfaces that impede recharge and fragment habitat should be limited. (27)

458. COMMENT: The protections for the rural and environmentally sensitive areas should be set at 0.3 percent impervious surface cover, thus reducing the densities in the remaining rural areas of the coast. (34)

RESPONSE TO COMMENTS 453 THROUGH 458: The 0.3 percent impervious cover limit for the Coastal Environmentally Sensitive Planning Area was presented in a Notice of Public Meetings and Opportunity for Public Comment (26 NJR 1009, February 22, 1994) and again presented in an Interested Party Review in December 1997. The intent of this notice was to introduce the alternative methodologies for determining acceptable impervious cover and to solicit public comment. The 0.3 percent impervious cover limit was intended for discussion purposes only, and most commenters responded that this limit was much too restrictive. The Department considered many factors when establishing the impervious cover limits, including protection of environmentally sensitive areas, agricultural lands and open space, more efficient use of infrastructure, concentration of development, and protection of water and air sheds. The purpose of these rules is to protect the whole of the CAFRA region to allow the Department to balance its natural resource protection efforts with the economic needs of the region. The increase from the one percent impervious cover limit in the December 1998 proposal to the three percent in this rule was made so that the Department could account for roads and sidewalks required by the Residential Site Improvement Standards (N.J.A.C. 5:21) as part of impervious cover. Therefore, the rule results in approximately the same building density as was intended by the December 1998 proposal. The CAFRA Planning Map, which establishes the Coastal Planning Areas, was based on the State Plan Resource Planning and Resource Management Map. The impervious cover limits were selected to help achieve the Department's policy objectives for

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these Coastal Planning Areas. Areas where growth is encouraged or discouraged reflect existing development and infrastructure. In addition, the three percent impervious cover limit corresponds with the lowest impervious cover limit provided for under the prior rules in subchapter 5. Much of Ocean County is in the Coastal Suburban Planning Area, but a significant portion is also in the Coastal Environmentally Sensitive Planning Area. The Department does not believe that the 30 percent impervious cover limit in the Coastal Environmentally Sensitive Planning Area results in an urban environment, but rather provides for new development as an outgrowth of expanding infrastructure from the Coastal Metropolitan Planning Area, designed in a manner that protects coastal resources through open space conservation and buffers.

459. COMMENT: East of the Garden State Parkway, the Department is proposing severe restrictions on commercial development; three percent lot coverage on Route 9 and 40 percent coverage on Route 30. These areas are the only commercial areas of Galloway Township to offset the social costs on mandated housing. In addition, there are only minimal environmental constraints in these areas. Between the Pinelands Commission and CAFRA, the State is destroying the tax base and in effect, the future of Galloway Township. The Department should reconsider both Route 9 and Route 30 to allow higher percentages of coverage. (33)

RESPONSE: The Department's objective of implementing regional planning principles in the CAFRA area that are closely coordinated with the State Plan may at times result in development densities that are less than those that might be allowed under local ordinances. However, the adopted rule provides five coastal centers in Galloway Township including Conoverstown coastal village, Galloway coastal town, Oceanville coastal hamlet, Smithville coastal town and Wrangleboro coastal town with impervious cover limits of 50 percent to 70 percent. In addition, much of Galloway Township is located within the Coastal Suburban Planning Area. The Coastal Environmentally Sensitive Planning Area is an appropriate designation for the environmentally sensitive areas east of Route 9, which include wetlands, wetland buffers, threatened and endangered species habitat and the Forsythe Wildlife Refuge. Moreover, municipalities have the option of applying to the Office of State Planning for planning area changes or center designations that may allow higher impervious cover limits. The rules provide at N.J.A.C. 7:7E-5B.2 for the Department to review any changes to the State Plan Map and adopt, reject or reject and revise those boundaries for CAFRA purposes

460. COMMENT: The effect of N.J.A.C. 7:7E-5B.3 is to restrict the location of new concrete plants to the Coastal Metropolitan Planning Area, CAFRA urban centers, CAFRA regional centers, coastal regional centers, CAFRA cores and CAFRA nodes – locations where 80 percent or higher coverage would be permitted. These are often inappropriate locations because of the extent of existing residential development. The commenter suggests that, because of the particular site requirements for concrete production, a different standard ought to apply to this industry.

The commenter suggests the following rule language:

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A plant for the production of concrete and Class B Recycling Operations is exempt from the impervious coverage requirements of N.J.A.C. 7:7E-5B.3 if:

- a. It is located in a Coastal Metropolitan Planning Area, CAFRA urban center, CAFRA regional center, coastal regional center, CAFRA core, CAFRA node, CAFRA town, coastal town, CAFRA village and coastal village; or
- b. If it satisfies both of the following criteria:
 1. Is located within two miles of an existing intersection with an existing major highway or within 500 feet of an existing railroad freight line that shall be used; and
 2. Is located within the Coastal Suburban Planning Area or within 10 miles of a Coastal Metropolitan Planning Area, CAFRA urban center, CAFRA regional center, coastal regional center, CAFRA core, CAFRA node, CAFRA town, coastal town, CAFRA village, and coastal Village; or
- c. If it satisfies both of the following criteria:
 1. Located within two miles of an existing intersection with an existing major highway or existing within 500 feet of a railroad freight line that shall be used; and
 2. Located within one half-mile of a commercial or industrial development containing at least 50,000 square feet of enclosed building area within a single facility. (73)

RESPONSE: Although the Department understands that concrete plants have extensive impervious surfaces, this is also true of other industrial and commercial developments. The intent of the adopted rules is to concentrate development where development and infrastructure already exist. Therefore, concrete plants are most appropriately located in these areas as well, where they can serve new development approved under these rules. Redevelopment sites may also be appropriate for concrete plants. In addition, municipalities may apply to the Office of State Planning for a center designation if local officials believe it is in the best interest of their community. The rules provide at N.J.A.C. 7:7E-5B.2 for the Department to review any changes to the State Plan Map and adopt, reject, or reject and revise those boundaries for CAFRA purposes

461. COMMENT: Proposed N.J.A.C. 7:7E-5.3(c) requires that for unforested sites the impervious cover is to be limited by the amount of area covered by buildings and/or asphalt or pavement existing on the site at the time of application. In other sections, the rule indicates that the allowable impervious coverage will be based on the limits set in the rule or what is existing on the site, whichever is greater. This needs to be clarified. If this option of using whichever is greater is not the case, the rule should be changed. The language seems to limit the location of impervious cover to where it previously existed. This will restrict redevelopment of sites. Redevelopment of a site with the requirement that the new development go exactly where the existing development is located will limit the options for redevelopment. As the stated goal is to rely on redevelopment in already developed areas, the Department should be encouraging the use of such sites, not limiting it. (30)

462. COMMENT: In redevelopment areas, the allowable impervious surface is limited to existing conditions. This should be flexible. The goals and benefits of redevelopment may be

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such that they justify an impervious surface bonus, especially if the objective, as per the State Development Plan, is to encourage development in these areas. (85)

RESPONSE TO COMMENTS 461 AND 462: The provision at N.J.A.C. 7:7E-5.3(c) does, for an unforested site, limit the placement of impervious cover to the area covered by buildings and/or asphalt or concrete pavement legally existing at the time an application is submitted to the Department, but, as provided at N.J.A.C. 7:7E-5A.9(b)3 and N.J.A.C. 7:7E-5B.3(e)2, this restriction applies only either: (1) outside of the northern waterfront region or the urban area region in the Upland Waterfront Development Area; or (2) outside of a CAFRA center, CAFRA core, CAFRA node, coastal center or the Coastal Metropolitan Planning Area in the CAFRA area. In all other parts of the Upland Waterfront Development Area and the CAFRA Area, the placement of redevelopment is not limited to the area covered by buildings and/or asphalt or concrete pavement. This distinction was made between these areas and others to encourage redevelopment in centers and already highly developed areas.

463. COMMENT: When the proposal describes redevelopment it talks about existing footprints. When talking about redeveloping a lot in terms of assembling parcels of 50x100 feet or 20x20 feet, it will be impossible to redevelop appropriately and put on such a tract a major hotel or show development in a municipality such as Seaside Heights. When assembling parcels, it will not be possible to take those lots that are being acquired as part of a redevelopment and ever be able to stay within the existing footprint, because it is not part of the redevelopment. (74)

464. COMMENT: The Borough of Seaside Heights has significant plans for redevelopment. It is unclear in the proposed regulations how the impervious surface limitations will be applied for redevelopment in a town like Seaside Heights, where most of the land area would be considered 100 percent impervious coverage. For redevelopment in this area, what will be the limiting factor: the existing footprint of the building, the existing percentage of impervious coverage, or both? (6)

RESPONSE TO 463 AND 464: Seaside Heights is classified as a coastal town under the rules. Therefore, the impervious cover limit in Seaside Heights is either 70 percent or the amount of impervious cover existing at the time the application is filed with the Department, whichever is greater. Because Seaside Heights is a coastal center (coastal town), the impervious cover is not limited in placement to the location of the existing impervious cover during redevelopment. Thus, the rule should facilitate redevelopment of property within the Borough with impervious cover limits in excess of 70 percent, by providing an impervious cover “credit” for existing impervious cover located on site.

465. COMMENT: The stated intent of the proposal is to restrict development to those areas of a site which are not special water’s edge areas. However, rather than simply state that these areas are restricted, the proposal requires that the allowable impervious coverage be determined based on the net land area which is the total land area minus these special water’s edge areas. Thus the proposal restricts development on those areas of the site where it is allowed by requiring that the allowable impervious cover percentage be applied to the net land area rather than the total land

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area. This in no way relates to prohibiting development in the special water's edge areas as the rule already does this. What then is the justification for applying the impervious coverage percentages to the net land areas? Also, this contradicts concentrating development and clustering elsewhere in the rules. (30)

RESPONSE: This is not a change in policy. Under the prior rules in subchapter 5, general land areas were defined (former N.J.A.C. 7:7E-5.1) as all mainland features located upland of special water's edge areas. The allowable impervious cover limits in the prior rules established impervious cover percentages based on the general land areas and excluded the special water's edge areas from the general land area calculation. (former N.J.A.C. 7:7E-5.6). The impervious cover percentages of the prior rules allowed the Department to establish appropriate levels of development adjacent to these special waters edge areas. Individual special waters edge rules in subchapter 3 contain impervious cover limits where appropriate. The Department does not believe it is contradictory to use net land area in calculating the impervious cover limit, as the impervious cover limits apply to all but the most sensitive special waters edge areas and help to cluster development at an appropriate intensity outside of these areas.

466. COMMENT: Impervious cover for the CAFRA centers, cores and nodes is based on the total land area rather than the net land area. This "incentive" should be granted to all centers including the coastal centers and to all projects in the Metropolitan and Suburban Planning Areas. These are the areas where growth is to be encouraged not just the CAFRA centers, cores and nodes. There are only seven CAFRA centers and no cores or nodes. (30)

467. COMMENT: Under the proposal, the impervious coverage limits will be applied to gross land area (with the exception of special areas) in centers, but only to net developable land area outside of centers. What is the rationale for applying two different standards based upon the presence or absence of a center designation? (57)

468. COMMENT: Utilizing the net developable area outside of centers will reduce opportunities for development. For example, if a landowner owns 100 acres, of which 30 acres is wetlands and 20 acres is buffers, the net developable area is reduced to 50 acres. If the site is in the Coastal Rural or Environmentally Sensitive Planning Areas, only three percent of the 50 acres (i.e. 1.5 acres) can be covered with impervious surfaces such as buildings and roadways. In the Coastal Fringe Planning Area, where five percent coverage is allowed, only 2.5 acres of coverage would be permitted. Under the proposal, this amount can be further reduced if other special areas are present. The Department is imposing unreasonably low coverage limits without any demonstration that the environment will be beneficially affected. Prospective hardship to landowners is clear. In Coastal Rural and Environmentally Sensitive Planning Areas, the Department's proposal will require at least four acres for one home; in the Coastal Fringe Planning Area, at least two acres would be required for one home. Such large lot zoning is simply unreasonable. (57)

469. COMMENT: The Department's proposal for limiting growth based on impervious coverage and assigning developable percentages, will take away a substantial amount of land

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from productive use. With the new Delaware Estuary Region being designated limited growth by definition, the future use is severely restricted when the coverage limits are applied. These limits are determined by the net developable area which is the amount remaining after first subtracting out all wetlands, wetland buffers, beaches, dunes, threatened and endangered species habitats, and other special areas. Applying the proposed three percent limit reduces the chance of meaningful development that the region needs for economic vitality. Having the area rely on the natural wonders and eco-tourism for growth is not smart planning. (12)

470. COMMENT: The impervious coverage limits appear to be severely limiting and would again frustrate local development and redevelopment efforts especially in the many existing and planned office and industrial parks that are not located in Planning Areas 1 or 2 or in the few centers that have been identified. The Department should clarify the potential impact for the municipalities since it would preclude job location centers from being built in many instances. These impervious coverage limits are even more objectionable since they are applied to net site areas. The definition of “net land area” exacerbates the stringency, as other areas of a site can be excluded from the base on which the impervious surface percentage is calculated. Under this proposal, future construction of office and industrial parks will be cost-prohibitive. (85)

RESPONSE TO COMMENTS 466 THROUGH 470: As explained in previous responses to comment, this approach is not a change in policy. The requirement to calculate impervious cover limits based on “net” land area in areas outside of CAFRA centers, cores and nodes is intended to provide additional protection to environmentally sensitive areas. The use of the total land area in setting impervious cover limits within CAFRA centers, CAFRA cores and CAFRA nodes recognizes that these communities have pursued the comprehensive planning process inherent in becoming a CAFRA center, core or node. By allowing more impervious cover in CAFRA centers, cores and nodes, the Department encourages development in those areas deemed most appropriate through this public planning process. Office and industrial parks are more appropriately located in centers or the Coastal Metropolitan Planning Area which have the necessary infrastructure for such facilities.

471. COMMENT: Coastal town lots comprised of uplands and water areas are being penalized by a reduction of the area due to loss of water area. Currently, water courses count towards bulk area. (28)

RESPONSE: Watercourses are not regulated under CAFRA. The CAFRA area is upland of the mean high water line. Consequently, watercourses did not count toward the net land area on which development is allowed under the prior rules or under the adopted new ones. The impervious cover limits have been established to achieve land uses consistent with the goals of CAFRA and the State Development and Redevelopment Plan.

472. COMMENT: There is a separate impervious cover limit for a subset of the Coastal Suburban Planning Area yet there is no map of this area provided. Without a map showing where this impervious cover limit will be applied comments cannot be provided. (30)

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RESPONSE: Within the Coastal Suburban Planning Area, impervious cover is 30 percent for sites within a sewer service area, and five percent for other sites, unless the sites is within a center, in which case the impervious cover limits range from 50 percent to 90 percent. Sewer service areas are described at N.J.A.C. 7:15-5.16(a) and 5.18(c)4 and 5, and are identified in wastewater management plans in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15-5 and/or in an areawide water quality management plan in accordance with N.J.A.C.7:15.3. Wastewater management plans and areawide water quality management plans may be reviewed at the Department's Division of Watershed Management, 401 East State Street, Trenton, NJ; 609-984-0058. A review of these plans, in conjunction with the CAFRA Planning Map, would identify areas subject to different impervious coverage limits.

473. COMMENT: The commenter is concerned that Table H limits site coverage to 30 percent in the Coastal Suburban Planning Area in the event that center petition is not approved by the Department on an interim basis, or is modified or disapproved by the State Planning Commission, whose decision will, according to the proposed rules, supercede "CAFRA." See proposed N.J.A.C. 7:7E-5B.3(d), N.J.R. 4191. The underlying Planning Area for the Ciba Geigy property (Dover Township/Manchester Township) is the Coastal Suburban Planning Area which has a 30 percent coverage limit. Such a limit does not make sense when applied to a 1,400 acre former industrial site even if the center petition is not acceptable to the Department or the State Planning Commission, or if its boundaries are changed to exclude this site. Applying this standard to a 1,400 acre undeveloped brownfield property substantially inland from any coastal issues leads to an unintended and potentially absurd result: restricting redevelopment for this brownfield property. It is not a greenfield site to which strict coverage limits might be justifiably applied. A 30 percent coverage limit is inconsistent with rational redevelopment of the site. (17)

RESPONSE: The Toms River Coastal Regional Center includes a majority of the 1,400 acre Ciba property, so the majority of the site would qualify for an 80 percent impervious coverage limit. The remaining portion of the site is located in the adjacent Manchester Township which is outside of the Toms River coastal center and is therefore subject to the underlying Coastal Suburban Planning Area coverage, which is 30 percent.

474. COMMENT: The commenter understands the link between the amount of impervious coverage and environmental degradation as it relates to a reduction in water infiltration and loss of habitat. Nevertheless, the rules should allow a person to exceed the stated impervious coverage limits if it can be demonstrated that there will be no net environmental degradation of the site. This provision would foster the use of creative solutions to the acknowledged problem (85)

RESPONSE: In these rules, the Department is applying regional planning principles to achieve several objectives: concentrating development, protecting air and water resources, protecting environmentally sensitive areas, preserving habitat and open space and making more efficient use of existing infrastructure. The impervious covers for Coastal Planning Areas are intended to accomplish these objectives. Case-by-case changes to the impervious cover limits where engineering, planning or other strategies were applied to reduce environmental degradation of

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water quality or habitat would not address the other policy objectives, such as limiting sprawl and encouraging smart growth, of the rules. The Department encourages all applicants to employ creative solutions in their projects to reduce impacts within the allowed impervious cover limits.

475. COMMENT: Redevelopment of certain parcels of commercial land in Seaside Heights Borough may require high density development to assure economic feasibility. Promulgation of these rules at this time, with the misidentification of Seaside Heights as a lower density “coastal town,” could potentially thwart current efforts in attracting those commercial uses critical to the economic viability of the Borough. (47, 54)

RESPONSE: In Seaside Heights, much of the development requiring a CAFRA permit would be redevelopment. The impervious cover limit for redevelopment of a site would be either 70 percent (coastal town) or the existing impervious cover on site, which in Seaside Heights often exceeds 70 percent. Thus the rule would facilitate redevelopment in Seaside Heights.

476. COMMENT: The 70 percent coverage limitation that would include gravel would make any economic redevelopment efforts in the Borough of Seaside Heights totally unfeasible. There is no justification from an environmental standpoint. The issues presented within the coastal regulations about concerns over pollutants going into the bay are totally unjustified. Those pollutants occur mostly along roadways and on a barrier island there is no environmental benefit by limiting impervious coverage because there is no percolation to any potable aquifer. Any storm water that makes it to the bay before the bay meets the street in a storm event is a basic wash. The impervious coverage limits, particularly in the commercial area of Seaside Heights, have no environmental benefit or scientific support and would be onerous in terms of redevelopment.
(47, 54, 74)

RESPONSE: As noted in the response to comment 475, the rule will facilitate redevelopment in Seaside Heights because in the Borough, redevelopment can occur at the same impervious cover level as presently legally exists. As detailed in the response to comments 427 through 434, the impervious cover limits are intended to achieve several Department objectives in the CAFRA area. These objectives are not solely limited to the protection of water quality, but also include physical and visual screening and buffering from adjacent land uses, maintaining open space, micro-climate control, and restoration and enhancement of wildlife habitat. The fact that the limits may not be required in every case solely to protect water resources does not mean the limits should not be imposed.

477. COMMENT: The commenter is concerned about extending the impervious coverage limits into the special areas. The coastal high hazard area, V-zones, tend to change from time to time. The erosion hazard areas, whose boundaries have not been mapped yet, are also subject to debate, not just regionally but nationally as well. (105)

RESPONSE: Most of the regulated development within Coastal High Hazard Areas (V-zones) and Erosion Hazard Areas, as defined at N.J.A.C. 7:27E-3.18 and -3.19, respectively, consists of

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single family and duplex infill development, which, under N.J.A.C. 7:7E-7.2(e)1iii, is not subject to the impervious cover requirements under subchapters 5 and 5B nor is it subject to review under N.J.A.C. 7:7E-3.18 or 3.19.

478. COMMENT: The thirty percent coverage limit is not only poor planning for brownfield sites, it is poor planning for the entire Coastal Suburban Planning Area, even for the development of new sites. As a result of this proposal, development in this urbanizing tier, outside of centers, will occur in a rather spread out, suburban pattern. The vision of this Coastal Planning Area is inconsistent with the overall preference of the State Development and Redevelopment Plan, that is, the concentration of development as a design goal, even in the planning areas. This strict coverage limit for the Coastal Suburban Planning Area will encourage further development of greenfields rather than encourage reuse of brownfields. (17)

RESPONSE: For brownfields that are also contaminated sites, N.J.A.C. 7:7E-5.3(e) provides that for a site or portion of a site that is contaminated, as defined at N.J.A.C. 7:26E-1.8 in the Department's Technical Requirements for the Remediation of Contaminated Sites, the amount of impervious cover allowed on the site may be increased if required to properly remediate the contaminated portion of the site. This may result in higher impervious cover limits for brownfield sites than would normally be allowed based on the applicable overall Coastal Planning Area designation.

For brownfield or other previously developed sites, N.J.A.C. 7:7E5A.9(b)3 (unforested sites) and N.J.A.C. 7:7E-5B.3(e)2 (sites outside of CAFRA centers, cores and nodes) set impervious cover limits based on Table D or H values or the amount of legal impervious cover existing on the site, whichever is higher. Again, this provision would allow certain brownfield or other previously developed sites to have more impervious cover than would be normally allowed based on the applicable Coastal Planning Area designation for that site.

In developing these rules, the Department applied regional planning principles to achieve several objectives (concentrating development, protecting air and water resources, protecting environmentally sensitive areas, preserving habitat and open space and making more efficient use of existing infrastructure) in the CAFRA area. The impervious cover limits for the Coastal Planning Areas are intended to implement these objectives. The Department believes the 30 percent impervious cover limit for the Coastal Suburban Planning Area within a sewer service area is consistent with both its CAFRA objectives and the growth patterns encouraged for this area by the State Plan. Moreover, municipalities have the option of applying to the Office of State Planning for a planning area designation that, if accepted by the Department under N.J.A.C. 7:7E-5B.2, might allow higher impervious cover limits.

479. COMMENT: The strict coverage limits proposed in the Coastal Suburban Planning Area are likely to intensify development pressures on land in the Coastal Fringe, Coastal Rural and Coastal Environmentally Sensitive Planning Areas where according to this proposal summary, the Department wishes to discourage development. Unless it is the Department's intention to restrict growth severely in New Jersey, it cannot drastically downzone the Coastal Suburban Planning Area from 80 percent coverage to 30 percent coverage, and even more drastically limit

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impervious coverage in the Coastal Fringe, Coastal Rural and Coastal Environmentally Sensitive Planning Areas. (17)

RESPONSE: The Department believes that the impervious cover limits established for the Coastal Fringe (five percent), Coastal Rural (three percent) and Coastal Environmentally Sensitive (three percent) Planning Areas, when considered along with the higher impervious cover limits established for CAFRA centers, cores and nodes and coastal centers, will discourage development in these areas and concentrate it in places that are already developed or have the infrastructure currently in place to accommodate growth. While some sprawl may occur even with the adoption of these amended rules, the Department believes it will be far less than under the prior regulations.

As stated in previous responses to comments, the intent of these amended rules is not to reduce the overall amount of development in the CAFRA area, but to redistribute it to those areas that are already developed or have existing capacity to accommodate growth. In this manner, the Department is better able to achieve its objectives for the CAFRA area and fulfill the intent of the CAFRA legislation. The Department notes that an 80 percent impervious coverage limit was not applicable throughout the Coastal Suburban Planning Area under the prior rules in Subchapter 5. Under former N.J.A.C. 7:7E-5.6 and 5.7, coverage was determined on a site-by-site basis and the 80 percent coverage would have been the highest impervious coverage limit for these areas. A site with high environmental sensitivity and/or low development potential would have received a 40 percent or five percent impervious cover limit depending upon the region in which it was located.

480. COMMENT: Centers are an admirable planning concept and tool. However, even with the centers being a centerpiece of the State Development and Redevelopment Plan since 1992, they have resulted in little, if any, actual redirection of growth in New Jersey. Thus, it is not enough to assume that retention of generous coverage limits within centers will actually produce the concentration of development sought by the Department. (17)

RESPONSE: By closely coordinating these CAFRA rules with the State Plan as required in the 1993 Amendments to the CAFRA statute, the Department hopes to help usher in a new era of regional planning and state/local coordination for the CAFRA area. The Department believes that such an approach will better protect natural resources, promote strong regional economies and support a higher quality of life for coastal citizens and visitors. This new perspective may act as a catalyst in other areas to help achieve the goals and objectives of the State Plan.

The Department believes that encouraging development in areas that are already developed or have existing infrastructure to accommodate growth through the use of increased impervious limits, in concert with relatively restrictive impervious cover limits in environmentally sensitive and rural planning areas, will substantially reduce sprawl development. Of course, with the 24 unit CAFRA threshold, some sprawl development is likely to occur. However the Department worked closely with local and county agencies in identifying and delineating growth centers, and therefore believes the rules will discourage large-scale sprawl development and provide substantial benefits to coastal communities and environments.

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481. COMMENT: The proposal ignores settled investment backed expectations, particularly with respect to redevelopment sites. Ciba Specialty Chemicals Corporation has been assured in a prior CAFRA ruling that it could develop a six acre portion of its 1270 acre site at 80 percent coverage and as a result has been planning future development based on that coverage. As a result of this proposal, Ciba's property is being downzoned by more than 50 percent. There should be some compelling public purpose for such change. In fact, the public purpose sought to be achieved by the proposed regulations is better served by keeping the coverage at the current level. (17)

RESPONSE: The Department believes that regional growth planning and the protection of environmental resources and quality of life constitute a compelling public purpose, as detailed in the response to previous comments. The vast majority of the Ciba Specialty Chemical Corporation site is within the Toms River coastal regional center. Therefore, the impervious cover limit for a majority of the site is 80 percent or the amount of existing legal impervious cover on the site. Approximately 10 percent of the site was not included in the coastal center because it is located in the adjacent municipality of Manchester Township. The boundary of the Toms River coastal regional center was specifically requested by representatives of Toms River (Dover Township), but the adjacent area of Manchester Township was not requested to be included in the Toms River coastal regional center by representatives of Manchester Township.

482. COMMENT: The commenter supports the State's policy objective of redeveloping brownfields. Rules should be developed which allow for 80 percent coverage for all brownfields or redevelopment sites. (17)

RESPONSE: An across-the-board 80 percent impervious coverage limit would not be appropriate for all brownfield sites. If a brownfield site has a low percentage of impervious coverage currently existing on the site and is not located in a developed area with existing infrastructure, allowing a dramatic increase could result in the CAFRA objectives for the Coastal Planning Area not being met. However, the adopted rules do acknowledge the level of existing development on a site, as noted in response to comment 461. This provision would allow certain brownfield or other previously developed sites to have more impervious cover than would be normally allowed for the Coastal Planning Area designation for that site.

483. COMMENT: Communities located in the Coastal Metropolitan Planning Area (this includes all of Monmouth County that is located in the CAFRA Area) should have also been given coastal center designation and boundaries. Creating an impervious coverage of 80 percent in the entire area and not requiring center planning through coastal center designation, will lead to sprawling development and unplanned redevelopment. CAFRA, as amended in 1993, should encourage planning in all communities, no matter their location. There is room for development in the coastal region. It should be concentrated where there is existing infrastructure and where there are not delicate environmental features that need to be protected. The proposed regulations are not sufficiently protective. (10, 52)

RESPONSE: The Department does not agree that coastal centers needed to be delineated in

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coastal Monmouth County municipalities. The CAFRA area portion of Monmouth County is densely developed in many areas. Due to the proximity of Monmouth County to the New York metropolitan area, future development is likely to follow a similar pattern. This rule does not require municipalities to change municipal zoning to conform with this higher impervious coverage but they may instead retain existing zoning and thus maintain historical development patterns.

484. COMMENT: The commenter opposes the adoption of the proposed coastal rules because there are too many centers, they do not adequately protect rural and environmentally sensitive areas and do not adequately protect aquifers. New, stricter rules need to be adopted. (61)

485. COMMENT: The number of centers allowing 50 percent to 90 percent impervious cover needs to be greatly reduced. Drainage and flooding problems are already severe. By adding more impervious areas to the landscape this problem will only be heightened. This coverage will cause water quality and quantity, traffic and air quality problems. (28, 87, 110)

486. COMMENT: The rule proposal allows too many centers which will result in too much impervious cover. (34)

RESPONSE TO COMMENTS 484 THROUGH 486: The inclusion of coastal centers throughout the CAFRA area was necessary to provide opportunities for additional but concentrated growth and to discourage sprawl in their environs. However, in the more environmentally sensitive regions, the boundaries of the coastal centers are more tightly drawn around the existing development than in the more developed areas of the coast. While higher impervious cover limits will generate more stormwater runoff, the use of best management practices in the design and construction of stormwater management facilities and the requirement for minimum vegetative cover on a development site should address potential flooding issues.

N.J.A.C. 7:7E-5B.4 Vegetative cover in the CAFRA area

487. COMMENT: The proposal includes no basis or justification for the vegetative cover requirements. The proposal needs to address how these numbers are derived and what they will accomplish. (30)

RESPONSE: The prior rules in subchapter 5 included vegetative coverage requirements at former N.J.A.C. 7:7E-5.6. . These vegetative requirements have been part of the Coastal Zone Management rules since 1978. The adopted rules revise the procedure for calculating required vegetative cover areas, and establish a one acre minimum area for consideration of forest vegetation, while maintaining the same vegetative cover concept of the prior rule. Vegetative coverage requirements, including the planting and preservation of herb/shrub and trees, are intended to ensure that adequate areas of open space are maintained on a development site for the purpose of habitat enhancement, soil stabilization, microclimate control, visual enhancement and aquifer recharge.

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488. COMMENT: Concrete plants and Class B Recycling Operations should be exempt from the vegetation requirements at N.J.A.C. 7:7E-5B.4. (73)

RESPONSE: As noted in the response to comment 460, although concrete plants require extensive impervious surfaces, this is also true of other industrial and commercial developments. The vegetative cover requirements will provide physical and visual buffering to adjacent land uses and ensure necessary soil stabilization at these development sites.

Subchapter 6. General Location rules

489. COMMENT: A significant portion of New Jersey's road building dollars goes toward new roads, which often promote sprawling development, rather than toward repair of existing infrastructure. Linear development should not be permitted if it will lead to other development that is inconsistent with the State Development and Redevelopment Plan. These rules need to address the secondary impacts of linear development as well as potential future impacts. (10, 52)

490. COMMENT: Language should be added to Subchapter 6 to clarify that linear developments which create primary and secondary impacts counter to the Statewide Policies and Planning Area Objectives of the State Development and Redevelopment Plan will not be considered to satisfy the requirements of the Coastal Zone Management rules. (5)

491. COMMENT: The definitions should spell out what "close coordination" with the State Plan is and how it will be carried out, specifically in reference to state agency programs in the CAFRA area as spelled out in existing rules on linear development (N.J.A.C. 7:7E-6.1) and secondary impacts (N.J.A.C. 7:7E-6.3). The law requires any public or industrial development to obtain a permit. Most linear development (roads, water, and sewer lines) is financed by the public and would therefore qualify for a permit. Linear development generally has significant secondary impacts because of its key role in determining development patterns. Adding this definition would be a clarification and not a substantive change to the rules. (32)

RESPONSE TO COMMENTS 489 THROUGH 491: In its efforts to "closely coordinate" its coastal regulations with the State Plan, the Department has incorporated portions of the State Plan and its Resource Planning and Management Structure into the Coastal Zone Management rules. This has included developing the CAFRA Planning Map, based on the State Plan Resource Planning and Management Map, and substituting it for the Coastal Growth Ratings at N.J.A.C. 7:7E-5 in the CAFRA area. Adopting this approach furthers the goals of the Coastal Zone Management Program, including the policy to "concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development" and "encourage the preservation of open space." (N.J.A.C. 7:7E-1.5(b)ii.) As part of the concurrent proposal published in this Register, N.J.A.C. 7:7E-5B.2 is proposed to be amended to add descriptions of the Coastal Planning Areas used in the CAFRA Planning Map, which is part of the Location Rules.

The rules on linear development at N.J.A.C. 7:7E-6.1 and secondary impacts at N.J.A.C. 7:7E-6.3 require that an applicant demonstrate that a proposed development is consistent with all

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applicable Coastal Zone Management rules. While a secondary impacts analysis does not directly require a demonstration of consistency with the statewide policies and planning area objectives of the State Plan, the secondary impacts must satisfy all the Coastal Zone Management rules, which include coastal policies (N.J.A.C. 7:7E-1.5), Resource Rules (N.J.A.C. 7:7E-8) and Location Rules (7:7E-3 through 6). Thus, compliance with the CAFRA Planning Map would have to be shown.

Transportation and wastewater treatment systems, including sewer development, are the principal types of development that require a secondary impact analysis. The analysis must include an examination of the likely geographic extent of induced development, and its relationship to the State Plan, an assessment of likely induced point and nonpoint air and water quality impacts, and an evaluation of the induced development in terms of all applicable Coastal Zone Management rules. The rule on secondary impacts therefore requires consideration of the State Plan, as well as consistency with the Coastal Zone Management regulations, which have been closely coordinated with the State Plan. The concurrently proposed addition of the descriptions of the Coastal Planning Areas will assist the Department in this analysis.

492. COMMENT: Language should be added to the rules that incorporates close coordination with the State Development and Redevelopment Plan with existing CAFRA regulations addressing impacts of development on water supply, air, and sewer development. It is imperative to involve the goals of the State Development and Redevelopment Plan in the analysis of the secondary impacts of these developments. (10, 52)

RESPONSE: As explained in a previous response, a secondary impact analysis is required to include an analysis of the likely geographic extent of induced development and its relationship to the State Development and Redevelopment Plan, an assessment of likely induced point and nonpoint air and water quality impacts, and an evaluation of the induced development in terms of all applicable Coastal Zone Management rules. The rule on secondary impacts therefore requires consideration of the State Plan, as well as consistency with regulations which have been closely coordinated with the State Plan.

In the larger context, compliance with the Location Rules in Subchapters 3 through 6 is the first step of three in the review of a proposed development. Subchapter 8 requires consideration of a development's effects on the resources of the built and natural environment, including water quality, surface water use, groundwater use, and air quality. As a whole, the Coastal Zone Management rules both coordinate with the State Plan and incorporate coastal policies that examine the effect of linear development and its secondary impacts on coastal resources.

493. COMMENT: Other state agencies and regulations within the coastal zone should incorporate the State Plan into the review process and thus coordinate with each other. The current sewer extension in Cape May county is an example of how detrimental and piecemeal the current process is. (10, 52)

RESPONSE: The Department believes that the coastal rules have been closely coordinated with the State Plan and that they are substantially consistent with the goals and policies of the State

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Plan. A key objective of the CAFRA rules is to initiate a cooperative planning process with the coastal counties and municipalities and the State Planning Commission. Also, the Pinelands Commission and the Department have coordinated plans and regulations for many years through a memorandum of agreement. The Pinelands Commission and the State Planning Commission have also recently adopted a memorandum of agreement coordinating agency plans, programs, and initiatives. The Department believes that the development of consistent plans through a cooperative planning process will facilitate sound planning.

Sewer lines are conditionally acceptable provided they are consistent with a Water Quality Management (208) Plan approved by the Department. However, sewer lines must also meet all applicable Coastal Zone Management rules and have been required, and will continue to be required, to demonstrate that they will not generate secondary impacts that are inconsistent with the Coastal Zone Management rules, including all applicable rules on specific locations and resources.

494. COMMENT: Will the Department look at the Coastal Planning Area designations in making infrastructure permit decisions? For example, where saltwater intrusion jeopardized a potable water supply for a barrier island community, would the new infrastructure be prohibited because it is in the wrong planning area? The rules should be made clear if this is not the intent. (13)

RESPONSE: Proposed development will be considered in light of all applicable Coastal Zone Management rules. The concurrent proposal in this Register includes descriptions of the Coastal Planning Areas used as part of the CAFRA Planning Map. However, as provided in the General Location Rules of subchapter 6, the Department may conditionally approve a proposed development as reasonably necessary to promote public health, safety, and welfare. In addition, the concurrent proposal includes clarification that the extent to which a municipality has or has not conformed its ordinances or development master plan with the rules in subchapter 5 is not intended to be considered in any State permit decision involving infrastructure deemed necessary to alleviate significant and imminent threats to public health and safety. While it would be inappropriate to prejudge a situation without all the facts presented, providing drinking water to existing barrier island populations would be accorded a very high priority by the Department.

495. COMMENT: Nothing should inhibit the ability of a municipality to amend its Water Quality Management Plan or Facilities Plan such that a proposed development can be within a sewer service area. (85)

RESPONSE: In accordance with N.J.A.C. 7:7E-1.2(g) the Coastal Zone Management rules shall apply to the extent statutorily permissible to review of proposed amendments to areawide Water Quality Management Plans and Facilities Plans. This is also a requirement under the Water Quality Planning rules at N.J.A.C. 7:15.

496. COMMENT: The Coastal Suburban Planning Area encompasses most of the remaining buildable land in Ocean County within the CAFRA zone. Areas outside of a designated sewer service area are now proposed for five percent impervious coverage. If a project is located

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outside of a sewer service area, the applicant has the right to apply for a Water Quality Management Plan amendment or to provide on-site septic systems as long as the requirements of N.J.A.C. 7:9A Standards for Subsurface Sewer Disposal Systems are met. (109)

RESPONSE: An applicant may apply for a Water Quality Management Plan amendment or, if in compliance with applicable standards, the development may use septic systems in the Coastal Suburban Planning Area. However, when proposing regulated development, an applicant must demonstrate that it will meet all applicable standards in the Coastal Zone Management rules.

497. COMMENT: The proposed rule provides that the maximum impervious cover in an area designated Coastal Suburban Planning Area will be 30 percent except in the event that such an area is outside the boundaries of a Water Quality Management Plan. One of the criteria for Suburban Planning Area designation under the State Plan is the inclusion of the area within an appropriate Water Quality Management Plan. The commenter is concerned that a “catch 22” situation might develop in which the Department in its review of Water Quality Management Plans does not allow for an expansion because it is not in a Coastal Suburban Planning Area, and a Suburban Planning Area is not extended by Office of State Planning because it is not included in the Water Quality Management Plan. (79)

RESPONSE: A Water Quality Management Plan amendment will be reviewed by the Department based on its merits, including consideration of the impacts of expanding sewer service into a particular area. The “catch 22” situation should not occur because the Department will coordinate its review of a plan amendment with any other related plan, such as a Suburban Planning Area boundary modification under review by the Office of State Planning.

498. COMMENT: It is unclear how wastewater management plans that are currently under review by the Department will be treated if their approval is still pending when the new rules become effective. The Ocean County Wastewater Management Plan for the Southern Service Area has been under review by the Department since 1991. There should be a provision to incorporate that into the CAFRA rules. (6).

RESPONSE: According to Department records, the Ocean County wastewater management plan for the Southern Planning Area was first submitted to the Department in September 1994. It was resubmitted in December 1998 but was replaced by a new draft submitted in July 1999 that is currently under review. The Department recognizes that some wastewater management plans, such as Ocean County’s, were submitted prior to the proposal and adoption of these changes to the Coastal Zone Management rules, in many cases years before. All such pending wastewater management or water quality management plans or amendments that have not yet been approved by the Department will be reviewed by the Division of Watershed Management for consistency with these adopted new and amended Coastal Zone Management rules. This will ensure the most updated environmental review possible, even for plans or amendments that have been under consideration for an extended period of time. In emphasizing the importance of coordinating decisions among its programs, the Department also notes that the Coastal Zone Management rules are intended to guide all Department planning and management actions in the coastal zone,

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to the extent statutorily permissible, as provided at N.J.A.C. 7:7E-1.2(g) and (h). The Water Quality Management Planning rules at N.J.A.C. 7:15-3.6(a) also provide for this coordination.

Subchapter7. Use rules

N.J.A.C. 7:7E-7.1 Purpose

499. COMMENT: Language should be added to Subchapter 7 to clarify that the purpose of the rule is to establish a screening process to ensure that under these rules, uses must be consistent with the Statewide Policies and Planning Area Objectives of the State Development and Redevelopment Plan as well as meeting conditions set forth in the Subchapters on Resource and Location. (5)

RESPONSE: The subchapter 7 Use rules already indicate that the rules therein do not preempt Location rules restricting development, unless specifically stated, and that they set forth conditions which must be satisfied in addition to Location and Resource rules. In the concurrent proposal, the Coastal Planning Area descriptions will be set forth in N.J.A.C. 7:7E-5.2 and will be applicable to Location rules in subchapters 5 and 5B. Thus, where the rules in subchapter 7 refer to induced development or secondary impacts, such as in the Transportation Use rule, N.J.A.C. 7:7E-7.5, and the Public Facility Use rule, N.J.A.C. 7:7E-7.6, the Coastal Planning Area descriptions will be considered.

The Department believes it is not necessary to require in this subchapter that uses be consistent with the statewide policies of the State Plan. The State Planning Commission was authorized to adopt the coastal planning policies of the Department's rules and regulations adopted pursuant to CAFRA (effective since 1973) as the State Development and Redevelopment Plan for the coastal area. Many of the goals, strategies and policies in the State Plan's Statewide Policy Structure that relate to the coastal area and its resources therefore reflect or are comparable to those already integrated into the Coastal Zone Management rules. State Plan statewide policies on, for example, Air Resources, Water Resources, and Open Lands and Natural Systems have their counterparts in the Coastal Zone Management policies built into the various sections of N.J.A.C. 7:7E. The Location rules (7:7E-2 through 6), Use rules (7:7E-7) and Resource rules (7:7E-8) are the substance of the Coastal Zone Management rules and comprise a comprehensive program for determining development acceptability and the environmental impact of projects in the coastal area. Furthermore, eight coastal policies comprise the basis of the Coastal Zone Management rules, and these are set forth in the section on the Coastal Decision-Making Process at 7:7E-1.5.

500. COMMENT: The rules do not provide adequate linkage between the State Plan and either sewer infrastructure, water supply or roads. We have seen the growth that can occur where the water supply master plan of the State says we are having deficits, and sewers going into the ground in environmentally sensitive areas that are already being hurt. (112)

RESPONSE: New road or sewer lines must be consistent with the rule on location of linear development (N.J.A.C. 7:7E-6.1), as well as all other Location Rules, and a secondary impact

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analysis (N.J.A.C. 7:7E-6.3) must be conducted. Development that generates significant secondary impacts inconsistent with the Coastal Zone Management rules is prohibited, as provided in the Transportation Use Rule (N.J.A.C. 7:7E-7.5) and Public Facility Use Rule (N.J.A.C. 7:7E-7.6). While the rules do not provide a direct link between the State Plan and sewers or roads, the Coastal Zone Management rules have been closely coordinated with portions of the State Plan and its Resource Planning and Management Structure. Proposed development must be consistent with these revised coastal rules, including all policies designed to protect environmentally sensitive areas, open space, and other coastal resource areas.

In terms of water supply, the Resource Rules (subchapter 8) address the impact of proposed developments on water quality, surface water use, and groundwater use in N.J.A.C. 7:7E-8.4 through 8.6. The Department also relies on its Water Supply program to evaluate potential impacts to water supplies resulting from groundwater withdrawals and to make decisions on groundwater withdrawals and water diversion rights.

Subchapter 8. Resource rules

N.J.A.C. 7:7E-8.1 Purpose

501. COMMENT: Subchapter 8 includes a purpose statement that refers to a regional planning approach with goals and objectives. The Department should clarify that the judgment about the effect of a proposal on “various resources of the built and natural environment of the coastal region” will be based on meeting the Planning Area Objectives and the Statewide Policies of the State Development and Redevelopment Plan as well as adhering to the standards of the subchapter and those administered by other agencies. (5)

RESPONSE: Subchapter 8 is the third of three steps in the development screening process under the Coastal Zone Management rules. The “various resources of the built and natural environment of the coastal region” are addressed in the subchapter 8 rules, which require examination of potential impacts to marine fish and fisheries, water quality, surface water use, groundwater use, stormwater management, vegetation, air quality, and public access to the waterfront. Besides meeting the requirements of this subchapter, a proposed development must meet all applicable Location and Use rules (subchapters 3 through 7). In the concurrent proposal published in this Register, the Coastal Planning Area descriptions are proposed to be included as part of the Location Rules at N.J.A.C. 7:7E-5B.2. It is thus not necessary to refer to the Coastal Planning Area policies in subchapter 8. In terms of the statewide policies in the State Plan, the Coastal Zone Management rules set forth comparable coastal policies in 7:7E-1.5 that apply throughout the rules. Subchapter 8 states that in addition to the standards addressed in that subchapter, proposed development must meet applicable site development standards administered by other state and local agencies.

502. COMMENT: The new rules do not protect the known aquifers, especially along Route 9. (34, 87)

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503. COMMENT: Despite the importance of aquifer protection, especially in Cape May County, where saltwater intrusion is a major problem, the new rules won't protect the known aquifers, especially along the Route 9 corridor. (110)

504. COMMENT: The rules will allow paving over aquifer recharge areas and pumping of more groundwater out to the oceans and depleting aquifers even more. Aquifers are being impaired. The rules are not sufficiently protective of water quality. (112)

RESPONSE TO COMMENTS 502 THROUGH 504: The Coastal Zone Management rules address saltwater intrusion through groundwater use standards at N.J.A.C. 7:7E-8.6. These provisions require that an applicant's proposed coastal development demonstrate that the anticipated groundwater demand of the development, alone and in conjunction with the other groundwater diversions proposed or existing in the region, will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or will not significantly decrease the base flow of adjacent water sources. Groundwater withdrawals must not exceed the aquifer's safe yield. For the purposes of making these demonstrations, an applicant must show that, if the proposed development is to be served by a public water system, it will be served by an approved water purveyor. Or, if a proposed development is to be served by wells using 100,000 gallons per day or more, the development would require a water allocation permit. The water allocation permit review process evaluates whether there is a sufficient groundwater supply. The Department thus relies on the decisions of its water allocation program, which considers all applicable regulations on groundwater withdrawal and water diversion privileges and addresses issues related to salt water intrusion and aquifer recharge.

505. COMMENT: The Department has been running red lights with its existing coastal rules, which should have prevented coastal permits from being issued in Cape May as soon as saltwater began intruding into the aquifers. It has been going on for more than a decade. (87, 110)

506. COMMENT: Desalinization plants to stop saltwater intrusion are not the way of the future. Development should be stopped. (29)

RESPONSE TO COMMENTS 505 AND 506: In order to protect groundwater quality, the Department reviews proposed developments in accordance with all applicable Location Rules, Use Rules, and Resource Rules, including the Groundwater Use rule at N.J.A.C. 7:7E-8.6. It is not the Department's role or intent to stop development. However, under the Coastal Zone Management rules and the coastal permitting program, an applicant for a development is required to demonstrate to the maximum extent practicable that a proposed development will not have adverse effects on groundwater supply or quality. The Department also relies on the decisions of its water allocation program, which consider all applicable regulations on groundwater withdrawal and water diversion privileges. Groundwater resource impacts such as salt water intrusion and overpumping will continue to be addressed by the department's water allocation program. The coastal rules are designed to thus work in conjunction with all applicable Department regulations on water supply.

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507. COMMENT: Aquifer recharge areas should be treated as environmentally sensitive; the impervious cover limits in these areas should be less. Impervious cover limits have an incredible impact on ecosystems and communities and it is vital to control the amount of and location of these coverages. Impacts include decline in recharge of groundwater, increase in nutrient loads, increase in stormwater pollutants, loss of habitat, and increase in heat pollution to waterways. A decline in groundwater recharge areas contributes to the amount of water available to people with wells, a decline in the quality of the water available and a decline in the amount of filtration which takes place naturally. (10, 52)

RESPONSE: Depending on the area and the aquifer, aquifer recharge areas vary greatly in type. Since a large part of the coastal land area may recharge an aquifer to some extent, the determination of which aquifer recharge areas to protect by limiting impervious cover is complicated. Protection involves a variety of issues relating to stormwater, groundwater, and water supply. The Department seeks to protect groundwater levels and quality through the coastal rule on groundwater use (N.J.A.C. 7:7E-8.6), its water allocation program, and all applicable regulations related to water quality. The Department does acknowledge the importance of ensuring that sufficient recharge be provided for aquifers and will continue to consider the most appropriate manner in which this should be accomplished.

APPENDIX 2, BOUNDARIES OF COASTAL CENTERS IN THE CAFRA AREA NOT LOCATED ON BARRIER ISLANDS AND ON OCEAN FRONT SPITS AND PENINSULAS

APPENDIX 3, BOUNDARIES OF COASTAL CENTERS IN THE CAFRA AREA LOCATED ON BARRIER ISLANDS, OCEAN FRONT SPITS AND PENINSULAS

508. COMMENT: The commenter requests that the Smithville coastal town boundary be revised to include the entire Smithville Planned Unit Development. The proposed Smithville Town boundary only encompasses a portion of the Planned Unit Development (PUD) east of Pitney Road. Since a CAFRA permit was just issued for the final portions of the Smithville PUD west of Pitney Road, the commenter believes it has the right to extend development into this area. Thus for consistency purposes, the Smithville coastal town boundary should be extended west of Pitney Road to coincide with the issued CAFRA permit. This would also be consistent with the PUD approval, which was first issued in the early 1970s, extended by the Galloway Township Planning Board in 1996, and encompasses the areas west of Pitney Road. The commenter suggests the following language be added to the description of the Smithville coastal town:

“...thence west on Moss Mill Road to Old Port Republic Road, thence northeast along Old Port Republic Road 2150 feet, thence west to the eastern end of Sara Ann Court, thence west along Sara Ann Court to Pitney Road, thence north along Pitney Road to the Port Republic Municipal Boundary, thence along the Port Republic Municipal Boundary to its intersection with Moss Mill Road, thence west along Moss Mill Road to its

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intersection with Morses Mill Stream, to a point 1400 feet west of Morses Mill Stream, thence southwest along a line parallel to and at a perpendicular distance of 1400 feet northwest of Morses Mill Stream to the east right-of-way of the Garden State Parkway, thence south along the Garden State Parkway 2400 feet, thence due east to Wrangleboro Road, thence north along Wrangleboro Road 750 feet to a point that is perpendicular distance of 2000 feet southeast of Moss Mill Road, thence southeast along a line parallel to and at a perpendicular distance of 2000 feet southeast of Moss Mill Road to Collins Road, thence easterly long Collins Road to Pitney Road, thence along Pitney Road to Spencer Lane.” (51)

RESPONSE: The commenter’s description would add several adjacent areas of currently undeveloped land, including wetlands, to the west of the Smithville coastal center, especially to the west of Pitney Road. The Department agrees that some of the indicated areas, should be included in a coastal center because they have been approved for development; however, adjacent areas of wetlands should not be included. Because these areas are adjacent to the Wrangleboro coastal center, the Department is proposing a revised coastal center boundary for the Wrangleboro coastal center elsewhere in Appendix 2 of the concurrent proposal published in this Register.

509. COMMENT: The coastal centers for Port Elizabeth/Bricksboro, Springtown and Laurel Lake should be deleted since these proposed centers border the wild and scenic Maurice River. There is not enough development in Bricksboro and Springtown to warrant either a coastal village or coastal hamlet designation. Laurel Lake within the City of Millville has adopted a special zoning ordinance restricting the lot sizes since there has been a history of septic problems. Under this proposal, Laurel Lake would be allowed to develop at densities exceeding that of the special ordinance. (46)

510. COMMENT: The following coastal centers should be eliminated from this proposal since they do not contain enough development to warrant designation as coastal centers or are unnecessary extensions of adjacent development: Port Elizabeth, Springtown, Laurel Lake, and Othello. (35)

RESPONSE TO COMMENTS 509 AND 510: The coastal centers for Port Elizabeth, Springtown, Laurel Lake, and Othello were identified as potential villages and hamlets in the 1992 State Plan by local governments through the cross-acceptance process conducted between 1988 and May 1992.

The Department agrees that elimination of the Laurel Lake coastal center in Millville City would be appropriate. Laurel Lake was identified as a proposed center in the 1992 State Plan in Commercial Township and Millville City. However, since then Millville City obtained designation for a regional center (Millville/Vineland) that does not include Laurel Lake. This change to eliminate the Laurel Lake coastal center is proposed as part of the concurrent proposal published in this Register.

The Department does not agree, however, with the requests to eliminate the other coastal centers – Othello, Port Elizabeth/Bricksboro, and Springtown. These coastal centers were

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identified by local governments through the cross-acceptance process conducted between 1988 and May 1992, and the Department believes that there is enough development in these communities to justify coastal centers for the purpose of permitting CAFRA-regulated development. The boundaries were based on the recognition of existing, compact, mixed-use development and included adjacent areas to accommodate imminent planned growth where there were not significant environmental features.

511. COMMENT: The size of the coastal centers for Bridgeton/Hopewell, Cedarville, Fairton, Heislerville, Millville, Newport, Port Norris, and Roadstown should be reduced and the allowable impervious cover limit should not exceed 30 percent in these areas. These “coastal centers” have been unnecessarily expanded beyond the existing cluster of dwellings to encompass farmlands and undeveloped woodlands. The coastal hamlet and coastal village designations would allow for development densities that are markedly higher than that which current zoning would allow. The existing character of the proposed hamlets and villages would be adversely impacted by 50 to 60 percent impervious land cover. The commenter concurs with the clustering concept and recognizes that it can accomplish some environmental goals. However, this concept should be balanced with the preservation of the rural and historic landscape which exists in these villages. Imposing a lower density by lessening the impervious land coverage and reducing the overall size of specified coastal centers should help in preserving these landscapes. (46)

512. COMMENT: The following nine coastal centers are much too large and include undeveloped farms and forests that should not be developed at the intensities allowed under this proposal: Bridgeton, Cedarville, Fairton, Heislerville, Mauricetown, Millville, Newport, Port Norris and Roadstown. (35)

RESPONSE TO COMMENTS 511 AND 512: Any municipality may adopt more restrictive impervious coverage or vegetative cover requirements as part of the municipal zoning process. The Department has included a new provision at N.J.A.C. 7:7E-5.1(g) to reaffirm this municipal prerogative in the concurrent proposal published elsewhere in this Register.

Millville/Vineland is a CAFRA center whose boundaries were formally approved by the State Planning Commission and adopted by the Department. The Department can only revise CAFRA center boundaries when changes are made by the State Planning Commission.

The Department does not agree with the request to reduce the size of the indicated coastal centers. The coastal center boundaries were drawn based on the Department’s outreach efforts and in recognition of existing, compact, mixed-use development. However, coastal centers proposed by the Department do not solely encompass existing clusters of development. Some less developed areas adjacent to existing development have been included in these coastal centers in order to provide room for growth. The Department believes that these areas are warranted for inclusion in the coastal centers in order to encourage future development in areas that are adjacent to existing development, while protecting the outlying agricultural and environmentally sensitive lands outside of the coastal centers.

The Department notes that those municipalities which would like to revise these coastal center boundaries may seek a different community development boundary and formal center

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designation through the State Planning Commission. The Department believes that this cooperative, comprehensive process, in which the Department plays an active role, is the most effective strategy for addressing center boundaries.

513. COMMENT: The Cumberland County Department of Planning requests that waterfront areas be included as part of the coastal centers, particularly in the Fairton, Fortescue, Leesburg/Dorchester, and Port Norris coastal centers. (62)

514. COMMENT: Commercial Township requests that the waterfront section of Port Norris (that is, Bivalve and Shellpile) be included as part of the Port Norris coastal village. The waterfront portion of Port Norris is proposed for redevelopment and will utilize the recently approved Federal Empowerment Zone funds. (64)

515. COMMENT: The current delineation of the Port Norris coastal village does not include an area which has been specifically set aside for development as a sewer treatment plant. The site, Block 224, Lot 6, is located at the end of Main Street and has frontage on Main Street, Prospect Street and Hands Landing Road. Construction of the treatment plant is essential to the redevelopment activities planned for Port Norris. The Port Norris section of Commercial Township has been designated as a Federal Empowerment Zone, and thus is eligible to receive monies to spur development and create much needed ratables and employment opportunities in the area, for example at the sewer plant. (64)

RESPONSE TO COMMENTS 513 THROUGH 515: The waterfront areas proposed for inclusion do not exhibit the compact, mixed-use character that would warrant inclusion in the coastal centers.

Secondly, the sewer treatment plant site in Port Norris has not been approved for development and does not constitute the type of imminent development that has been included in coastal centers. However, the Department notes that it does not intend that the coastal centers should be used by other agencies to set funding priorities. Establishing priority for funding is to be accomplished through the State Plan process, including the center designation process.

The Department notes that the indicated coastal centers are within municipalities that are currently engaged in the center designation process with the Office of State Planning, and have accepted funding through the Department's Local Coastal Grant program to assist in the process. The Department believes that continuing the coordinated, cooperative State Planning Commission center designation process and discussing these concerns in that forum is the most effective planning strategy for determining the center boundaries for these municipalities. After action by the State Planning Commission, the Department will undertake an independent review of the approved center boundaries for potential incorporation as CAFRA center boundaries in the CAFRA Planning Map.

516. COMMENT: Barnegat Township objects to its coastal town center boundary as currently proposed. The actual town center is much larger than that of the proposed coastal center. As this map is essential for present and future development within the township, we request to meet with Department officials to discuss changes to the Barnegat coastal center to better reflect township

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plans. (55)

RESPONSE: The Department notes that Barnegat Township has submitted a center petition to the State Planning Commission. The Department believes that continuing the coordinated, cooperative State Planning Commission center designation process is the most effective strategy for determining the center boundaries for Barnegat Township. The Department will be an active participant in this process.

517. COMMENT: Eagleswood Township has a Limited Business Zone that has been designed to incorporate airline related business. This zone borders the Eagles Nest Airport, which is funded by the New Jersey Department of Transportation and the Federal Aviation Administration. The State Plan indicates that expansion of the Garden State Parkway is already underway, and this Limited Business Zone is a short distance from existing exit 58 of the Parkway. It is necessary that this area be included within the Department's mapped boundaries. (111)

RESPONSE: The Department does not consider this area to reflect the characteristics of a coastal center, which should include compact, mixed-use development. As explained in response to previous comments, the coastal center boundaries were delineated based on the existing, compact, mixed-use development and included adjacent areas to accommodate imminent planned growth where there were not significant environmental features. The State Planning Commission's comprehensive cooperative planning process is the most effective strategy for establishing center boundaries. After action by the State Planning Commission, the Department will undertake an independent review of the boundaries for purposes of their incorporation into the CAFRA Planning Map.

518. COMMENT: In 1998, the Township of Eagleswood in conjunction with Little Egg Harbor Township and Tuckerton Borough submitted a center designation and planning area change petition to the Office of State Planning. This petition included the designation of "West Creek Village" in the southern part of the Township of Eagleswood and "Staffordville Village" along Route 9 in the northern part of the Township. In addition, the petition included a request to expand the Coastal Suburban Planning Area along substantial portions of the Route 9 frontage within the Township. To date the Office of State Planning has not responded to the petition. Further, the boundaries of the coastal center differ substantially from the Township's petition to the Office of State Planning. (111)

519. COMMENT: The proposed coastal center boundaries are intended to represent a consensus of local county and state governments for future growth and infrastructure decisions. The center boundaries submitted to the Office of State Planning for Staffordville, West Creek/Parkertown and Tuckerton/Little Egg Harbor Township were the result of consultation between three municipalities and the Ocean County Planning Board and represent a consensus of the towns' views. Therefore the coastal center boundaries currently under consideration should rely upon and be reconciled with the proposed center boundaries incorporated into the Ocean County Cross-Acceptance Report and submitted to the Office of State Planning. (115)

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520. COMMENT: Based on public hearings conducted in Ocean County, further refinements should be made, particularly in the area of West Creek and Staffordville. (6)

521. COMMENT: The Staffordville town center delineation cuts off a large part of the Route 9 commercial corridor. It would help the town if the Department could extend the boundary to include more of this land. (9)

522. COMMENT: It is imperative that the Route 9 corridor starting at the Township of Eagleswood's northern border with Stafford Township to the village of West Creek be included in the Staffordville coastal center. This area encompasses the C-2 Commercial Zone, which is currently partially developed with small businesses such as gasoline stations, restaurants and Connectiv Electric. In addition, the Eagleswood Elementary School and the Tuckerton Barracks of the New Jersey State Police are located within this area. (111)

523. COMMENT: The Staffordville coastal hamlet is smaller than the Staffordville village center proposed by Eagleswood Township. The coastal center boundary includes mostly developed properties and commercially zoned parcels. Thus the proposed area does not allow for future expansion in general and for residential development within the proposed center. (115)

RESPONSE TO COMMENTS 518 THROUGH 523: The Department agrees that its coastal center boundaries should reflect the planning reached through consensus between municipalities, the county, and the Office of State Planning, provided the boundaries are consistent with CAFRA and the Coastal Zone Management rules. The coastal center delineations for Staffordville and West Creek/Parkertown were based in large part on plans submitted to the State Planning Commission as part of the cross-acceptance process. The Department notes that the Townships of Eagleswood, Tuckerton and Little Egg Harbor are currently engaged in a region-wide center designation process with the Office of State Planning and have accepted funding through the Department's Local Coastal Grant program to assist in the process. The Department encourages the continuation of the coordinated, cooperative center planning process between municipalities and the Office of State Planning, a process in which the Department will be an active participant. The Department believes this is the most effective strategy for establishing center boundaries. After action by the State Planning Commission, including changes to center or planning area boundaries, the Department will undertake an independent review of the boundaries for purposes of their incorporation into the CAFRA Planning Map.

524. COMMENT: As the owner of the Sea Pirate Campground, the commenter would like to know if the center delineation goes through the middle of his property and, if so, whether the line can be moved to include all of his developed land, so the commenter can upgrade his campground. (9)

525. COMMENT: Eagleswood Township notes that, starting at the southern end of Eagleswood Township there is a family campground. The coastal center boundary runs through the middle of the property, which has a valid NJPDES permit. The boundary should be modified to fully

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incorporate the campground into the coastal center. This will be consistent with the mapping submitted to the Office of State Planning. (111)

RESPONSE TO COMMENTS 524 AND 525: The West Creek/Parkertown coastal center is located at the southern end of Eagleswood Township, and the Department acknowledges that the comments reference a site on the southeastern side of the West Creek/Parkertown coastal center. The Department does not agree with the recommendation to include the remainder of the commenter's property within the coastal center. Coastal center boundaries are not based on individual property lines, but on existing infrastructure and development. The property in question does not contain the types of infrastructure or facilities needed for center-based development. The Department recognizes that there may be areas currently outside of the coastal center that commenters want to develop. However, the Department believes that the coordinated, cooperative planning process with the Office of State Planning is the most effective strategy for determining center boundaries. After action by the State Planning Commission, the Department will undertake an independent review of the boundaries for purposes of their incorporation into the CAFRA Planning Map.

526. COMMENT: The proposed West Creek/Parkertown village center delineation should be modified since the boundary on the Little Egg Harbor side of the center runs directly through the Frog Pond School site. (115)

RESPONSE: The Department agrees that the elementary school in West Creek should be entirely included within the coastal center. While coastal center boundaries are not based on individual property lines, they are based on existing infrastructure and development. The Department also believes this change is appropriate because of the significance of this community-based educational facility. The change is included in the concurrent proposal in this Register.

527. COMMENT: The commercial properties on the east side of Route 9 north of Bay Avenue in West Creek (Eagleswood Township) have been excluded from the coastal village. This exclusion is illogical and inappropriate. (115)

RESPONSE: The Department notes that Eagleswood Township is currently engaged in a region-wide center designation process with the Office of State Planning, and has accepted funding through the Department's Local Coastal Grant program to assist in the process. The coordinated, cooperative State Planning Commission center designation process is the most effective strategy for determining center boundaries. After action by the State Planning Commission, the Department will undertake an independent review of the boundaries for purposes of their incorporation into the CAFRA Planning Map. As noted in response to previous comments, the Department agrees that the elementary school in West Creek should be entirely included within the coastal center, and is proposing that change in the concurrent proposal.

528. COMMENT: The Tuckerton coastal center boundary does not include a large area west of Giffordtown Road and north of Stage Road. This sector of the proposed town center includes the

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Pinelands Regional Middle and High Schools, both located on Nugentown Road, and a residential neighborhood. Such important community facilities should be included within the center boundary. (115)

529. COMMENT: The Tuckerton coastal center boundary should include both sides of Route 9 west of Leitz Boulevard in Little Egg Harbor Township, not just the north side of the road. The boundary proposed by Little Egg Harbor Township follows a zone boundary along Route 9, which is set by ordinance as 700 feet from Route 9. (115)

530. COMMENT: The Tuckerton coastal center boundary in the northeast sector does not follow the boundary of the approved Sea Oaks golf course and residential development. The golf course portion of the development is currently under construction. The Department recently granted an amendment of the Ocean County 208 Water Quality Management Plan to expand the sewer service area to include the Sea Oaks development. The coastal center boundary should include this area and be consistent with related infrastructure decisions by the Department. (115)

RESPONSE TO COMMENTS 528 THROUGH 530: While the Department encourages the inclusion of community-based facilities such as schools, the schools proposed for inclusion are not immediately adjacent to the coastal center. In regard to the other requests, the Department notes that Tuckerton Borough is currently engaged in a regional-wide center designation process with the Office of State Planning. After action by the State Planning Commission, the Department will undertake an independent review of the boundaries for purposes of their incorporation into the CAFRA Planning Map.

531. COMMENT: Based on the current density of development, the Borough of Pine Beach requests to be delineated as a coastal center. (83)

RESPONSE: Since the suggested coastal center is located in the Coastal Suburban Planning Area and meets the criteria the Department used to delineate its other coastal centers, that is, it recognizes the extent of existing development and will help fulfill the Department's intent of encouraging development in the Coastal Suburban Planning Area, a proposed coastal center for Pine Beach is included in the concurrent proposal elsewhere in this Register.

532. COMMENT: Seaside Heights Borough objects to its identification as a coastal town under the proposed rules. Seaside Heights is a fully developed community and its continued economic development and growth is of critical importance to the state's economic health. Along with Atlantic City and Wildwood, Seaside Heights is a premier tourist destination, generating a substantial amount of the state's sales tax revenues. The lack of designation as a regional center in the State Plan is an error, and the county has included a petition to have Seaside Heights designated as a regional center as part of the cross-acceptance process. (47, 54, 74)

RESPONSE: The Department disagrees with the commenter's request that the Borough of Seaside Heights be designated as a coastal regional center. Seaside Heights remains a highly seasonal tourist oriented community, with little population or employment opportunity for most

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of the year, and thus designation as a town is more appropriate. Further, the impervious cover limit for Seaside Heights under the adopted rule would be 70 percent or the existing impervious cover, whichever is greater. Therefore, the high existing impervious cover would often allow for impervious coverage in excess of 70 percent, and will accommodate new development. The Department believes that the designation of Seaside Heights as a coastal town is appropriate.

533. COMMENT: Stafford Township requests a revision of the Bonnett Island coastal hamlet to encompass only the developed portions of both Bonnett Island and Cedar Bonnet Island, and to redesignate it as the “Cedar Bonnett/Bonnet Island coastal hamlet.” The revision would involve the exclusion of 15 acres of wetlands on Bonnett Island and the inclusion of 20 acres including two marinas, three residences, and vacant land on Cedar Bonnett Island. The net difference would constitute a five acre increase.

The developed portion of Bonnet Island is an existing sewer service area; the developed portion of Cedar Bonnett Island is a proposed sewer service area. The area outside of the sewer service area cannot be sewerred without amendments to both the township and the county wastewater management plans. The Ship Bottom Borough Water Department serves Bonnet Island; Cedar Bonnett Island is served by private wells. Each of the islands is accessible to Route 72 and no road extensions are required for the existing residential dwellings and commercial uses. The requested areas demonstrate proximity to roads and sewer infrastructure, and have infrastructure connections to the mainland.

The requested inclusion of Cedar Bonnett Island will assist in the expansion and continuation of its facilities, promote economic development and tourism, promote adequate public facilities to accommodate seasonal demands, and enhance the existing character of the island, which is already oriented towards boating and fishing.

The requested coastal center boundary clearly distinguishes between the center and the environs of the coastal hamlet, and is consistent with the existing land use pattern, the location of sensitive environmental resources, and the planning efforts of Stafford Township. The proposed coastal center is consistent with the 1994 Stafford Township Master Plan. (115)

RESPONSE: Bonnet Island was identified as a hamlet in the 1992 State Plan, which was the basis for its designation as a coastal hamlet by the Department. The Department agrees that the environmentally sensitive areas on Bonnett Island should be excluded and has modified the coastal center accordingly in the concurrent proposal. However, the Department has not proposed the requested change to include Cedar Bonnett Island in the coastal center. The impervious cover limits at N.J.A.C. 7:7E-5B do not apply to bay islands, including Cedar Bonnett Island. However, Bonnet Island has been specifically excluded from the definition of bay islands at N.J.A.C. 7:7E-3.21 for the purposes of the Coastal Zone Management rules because of the existing level of development and infrastructure. Under the adopted rules, impervious cover limits for development on bay islands are subject to the Special Area rule on bay islands (N.J.A.C. 7:7E-3.21) and not based on location in a coastal center or Coastal Planning Area.

534. COMMENT: The Salem County Planning Board requests that all proposed coastal centers in Lower Alloways Creek, Quinton, and Elsinboro Townships be considered villages rather than

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hamlets. This change is consistent with the designations approved by the State Planning Commission during cross-acceptance, and is in keeping with the character and development patterns of these existing centers. (96)

RESPONSE: As noted, the coastal centers in Elsinboro Township (Oakwood Beach, Sinnickson's Landing), Lower Alloways Creek Township (Canton, Hancock's Bridge, Harmersville), and Quinton Township (Quinton) are considered villages under the State Development and Redevelopment Plan. The Department did delineate Hancock's Bridge and Quinton as coastal villages. In regard to the remaining indicated coastal centers, the Department recognizes the recommendations for approval as villages by the State Planning Commission. In the concurrent proposal in this Register, the Department is proposing to reclassify Oakwood Beach, Sinnickson's Landing, Harmersville and Canton, as coastal villages.

535. COMMENT: The commenters request that the Oakwood Beach coastal center area be reduced to the boundary proposed in October 1998, and that undeveloped land north of Riverview Drive, including a golf course, be excluded from the center. The impervious cover limit for a hamlet would allow a density of four to five housing units per acre. That density would not conform to the surrounding pattern of development and is inappropriate so close to the Salem River. (8, 23, 36, 67, 70, 80, 88, 88, 94)

RESPONSE: The coastal centers proposed in December 1998 were delineated to circumscribe only existing development. The coastal center boundaries in the August 1999 reproposal were based on the Department's outreach efforts subsequent to the 1998 proposal, which was not adopted. The Department does not agree with the request to reduce the size of the Oakwood Beach coastal center. The inclusion of less developed areas is intended to enable future development in areas that are adjacent to existing development, while preserving the outlying agricultural and environmentally sensitive lands in the environs.

It should be noted that the impervious cover limit for this coastal hamlet functions only as a maximum limit. A municipality may maintain or adopt more restrictive impervious cover requirements as part of the municipal zoning process. In this way a municipality can maintain the existing pattern of development, if desired. The Department is proposing a new provision at N.J.A.C. 7:7E-5.1(g) that reaffirms this municipal prerogative in the concurrent proposal published elsewhere in the Register.

Impacts to the Salem River are addressed in part through CAFRA regulation of certain individual developments within 150 feet of the mean high water line, as provided in more detail at N.J.A.C. 7:7-2.1. The Department believes that the waterfront area receives adequate protection under this provision, and that the coastal center, which is not adjacent to the water's edge, will not have an adverse effect on the river.

536. COMMENT: The boundary of the Mannington coastal center should be expanded to encompass the professional center at the corner of the intersection of New Jersey Route 45 and County Route 540 (opposite Salem Hospital). This minor addition would include an important township growth area within CAFRA and would be more in keeping with the center boundary delineated by the township during cross-acceptance. Given that the Mannington coastal center is

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part of the Salem City/Mannington Township regional center proposed in the State Development and Redevelopment Plan, i.e. approved during cross-acceptance, it is recommended that it also be designated a coastal regional center rather than a hamlet. At the very least it should be designated a coastal village. (96)

RESPONSE: The Mannington center is identified in the State Plan as part of a larger Salem regional center. Salem City has submitted a center petition to the State Planning Commission for designation as a regional center, but Mannington has not yet participated in the process. The Department believes that participation in the coordinated, cooperative State Planning Commission center designation process would be the most effective strategy for determining the appropriate boundaries. After action by the State Planning Commission, the Department will undertake an independent review for purposes of incorporating the boundaries into the CAFRA Planning Map.

537. COMMENT: The boundary of the Mannington coastal center should be reduced from 700 feet west of State Route 45 to 200 feet west so as not to include the farmland west of the development along State Route 45. (8, 22, 36, 67, 70, 80, 84, 88, 94)

RESPONSE: The Department does not agree with the request to reduce the Mannington coastal center. Coastal center boundaries were drawn based on the Department's outreach efforts. They recognized existing, compact, mixed-use development, and included adjacent areas to accommodate imminent planned growth where there were not significant environmental features. The Department expects that municipalities will continue to examine the delineations in relation to their own planning efforts and development and redevelopment issues, and in many cases, seek a different community development boundary and formal center designation by the State Planning Commission. As noted above, the Department believes that participation in this coordinated, cooperative planning process, including stakeholders, municipalities, the county, and the Office of State Planning, is the most effective strategy for dealing with center designation issues. The Department will be an active participant in this process.

538. COMMENT: According to Appendix 2, the Cape May City coastal town boundary starts at the intersection of Sidney Street and Lafayette Street (County Route 633), when in actuality the City limits start at the center line of Schellenger's Creek. The intersection of the first unnamed street with Lafayette Street should be included within the coastal town boundary. (25)

539. COMMENT: The Cape May Marlin and Tuna Club property is not within the Cape May City center, but is located a block away from the center boundary. The entire City of Cape May City should be included. (25)

540. COMMENT: The Cape May town is discriminatory and should be expanded to include property in east Cape May. (102)

541. COMMENT: The center delineation for Cape May City seems to end at Second Avenue and Mount Vernon and Beach Drive, and leaves out property at Third Avenue, including six lots

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zoned for single family dwellings. This property should be included in the center. (76)

542. COMMENT: Everything east of Pittsburgh Avenue is not included within the designated center of Cape May City. There is no reason that Cape May City should be treated any differently than Stone Harbor or Avalon since the City is a functional equivalent to a barrier island. Cape May City should have a center designation that includes all of the municipality. (57)

543. COMMENT: The City of Cape May coastal town is severely underinclusive; outside the designated center are areas already developed, and which have existing approved infrastructure to support future development, including Poverty Beach (New York, New Jersey and Maryland Avenues east of Pittsburgh Avenue), the Coast Guard base, and existing marinas and other development north of Lafayette Avenue. (57)

544. COMMENT: The City Council and Planning Board of the City of Cape May request that the entire geographical area of the City of Cape May be included in the Community Development Boundary incorporated in the City's Town Center Designation Petition as well as in the Cape May City coastal town boundary in the proposed coastal rules. In seeking designation by the State Planning Commission in June 1998 as an existing town within Environmentally Sensitive Planning Areas, the City of Cape May delineated a comprehensive and longstanding planning and implementation strategy to control land use development as a priority goal while increasing the protection of the City of Cape May's natural environment by maintaining the integrity of the surrounding ecological systems. The continuous review and periodic updating of the City's Land Use Ordinances and Zoning Map are key ingredients in this vital process. Currently, the existing boundaries for the planning area involving the City of Cape May as delineated by the State Planning Commission as well as the Cape May City coastal town boundary contained in the proposed coastal rules omit specific and significant areas of the City which jeopardizes the City's capability to achieve its long-term goals.

For example, the residential area of East Cape May, north to Maryland Avenue, and the area surrounding and including Shelton College should be included in the City of Cape May coastal center. In addition, the area surrounding and including the Coast Guard Training Center, including areas south of Pennsylvania Avenue to the beach should be included. The Schellenger's Landing section of Cape May is a hub of fishing and tourism activities and should be included as part of the City of Cape May's coastal town. The Cape May Harbor area represents one of the few safe harbors with direct access to the Atlantic Ocean south of the Great Egg Harbor Bay and should be included in the coastal center. Lastly, the City of Cape May's beaches, which are being replenished by the Army Corps of Engineers, should be included within the Cape May City center. (4, 14, 81)

RESPONSE TO COMMENTS 538 THROUGH 544: As a result of the cross acceptance process, a different boundary than that referenced in the comment was approved by the State Planning Commission as a town center on October 27, 1999. The approved boundary includes many, but not all, of the areas recommended above for inclusion. In accordance with newly adopted N.J.A.C. 7:27 7:27E-5B.2, the Department will undertake an independent review of the

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community development boundary for incorporation into the CAFRA Planning Map within 90 days of the effective date of this rule.

545. COMMENT: While the Department has delineated a center for the Schellenger's Landing area, this coastal town delineation omits the existing development and marinas on Ocean Drive, which is fully sewerred. It is developable to the extent that it is not wetlands. (57)

546. COMMENT: The Ocean Drive section of Lower Township should be included in a center designation. There is already at least one first class residential and marina project almost completed. There are also a number of marinas and other commercial applications that are suitable to residential applications as well. This is a business thoroughfare that is vital to the local economy. It is not good planning to exclude such thoroughfares from designations that would permit their highest and best use. Lower Township officials have asked that this area be included in the town designation and apparently the Department has ignored them. The majority of the land on that strip is unusable anyway, due to its environmental sensitivity, so it makes no sense to prohibit the use of the uplands by enacting a 3 percent coverage rule. This would effectively put those properties in noncompliance from the date of the enactment. (38)

RESPONSE TO COMMENTS 545 AND 546: The Department does not agree with the recommendation to include the Ocean Drive area in or as a coastal center. The Ocean Drive area is not contiguous to developed mainland areas (Schellenger's Landing) and is not a community-based area with compact, mixed use forms of development. The Department believes that the coordinated, cooperative planning process with the Office of State Planning is the most effective strategy for dealing with center boundaries. The Department would be an active participant in this process. After action by the State Planning Commission, the Department will undertake an independent review of proposed coastal center delineations for incorporation into the CAFRA Planning Map.

The existing properties will not be in noncompliance with the new rule. The three percent impervious cover limit for sites in the Coastal Environmentally Sensitive Planning Area only applies to proposed development or redevelopment. The impervious cover limit for a site located in this Coastal Planning Area will be three percent of the net land area on the site, as determined under N.J.A.C. 7:7E-5.3(d), or the acreage covered by buildings, asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department, whichever amount is higher, in accordance with N.J.A.C. 7:7E-5B.3(e). In other words, existing properties to be redeveloped are allowed at least the amount of buildings, asphalt or concrete pavement that they currently have.

547. COMMENT: The Cape May Court House coastal regional center does not include the Acme/Staples mall, which is the commercial center of this area. (57)

RESPONSE: This area was included in the Cape May Court House coastal regional center boundary as part of the August 2, 1999 reproposal, and is effective with this rule adoption.

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548. COMMENT: The location of the proposed Atlantic-Cape Community College in Middle Township should be included in the Cape May Court House coastal center. (14, 42)

RESPONSE: The Department does not believe this site along Court House-South Dennis Road is appropriate for inclusion within the coastal center. Although this site is one of several which have been under consideration for the Atlantic-Cape Community College, a preliminary review of this site and surrounding area conducted by the Department indicates potentially significant environmental resources, including endangered and threatened wildlife and vegetation species habitats. Detailed wildlife and vegetation surveys and inventories will be required to adequately assess the potential impacts to these species. Due to the Department's concern related to protection of endangered and threatened species habitat, and the proposed inclusion of the Crest Haven area in the Cape May Court House coastal center (see response to comments 549-550), the Department has not included this proposed Atlantic-Cape Community College site within the center.

549. COMMENT: During discussions with Department staff about the Cape May Court House coastal center boundary, it was determined that the county complex at Crest Haven, already included in the 208 Plan, should be included. The proposed map does not reflect the boundaries discussed and agreed to at the meeting. The Crest Haven complex includes the Cape May County Administration Building, Health Department, Special Services School, Technical High School and other small facilities, Correctional Center, and County Nursing Home. This complex, supplied by municipal water and sewers, is the hub of county operations. (14)

550. COMMENT: The Cape May Court House coastal center should include the site of the county government offices at the Crest Haven complex, which include numerous agencies and buildings such as the County Administration Building, Health Department, Nursing Home, Special Services School, Technical High School and Vocational Center, County Jail, National Guard Armory, Municipal Utilities Authority sewage treatment plant and compost facility, and New Jersey Adult Education Training Facility. (42)

RESPONSE TO COMMENTS 549 AND 550: The Department considers the Crest Haven complex a significant omission in the coastal center delineation and agrees that it should be included. As a major county center for municipal and other services, it will contribute to the compact, mixed-use character of the community-based coastal center. The site contains existing infrastructure including roads and parking, and its buildings are organized in a manner that makes them accessible by walking. As indicated above, the complex includes county and municipal government offices and facilities, as well as residential and educational facilities. The Department suggests that it may be practical to consider expanding the use of the complex to include some commercial service facilities for workers in order to help reduce vehicle miles traveled. In sum, however, the Department agrees that such important community facilities should be included within the coastal center boundary. This change is proposed as part of the concurrent proposal published in this Register.

551. COMMENT: The description of the Cape May Court House coastal regional center

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boundary should be amended to: (1) replace “west” along a line perpendicular to the Garden State Parkway to the Connectiv Transmission line with “northwest”; (2) replace “1500 feet” with “1600 feet” in describing the boundary measured from County Route 657 (Court House-South Dennis Road); and (3) the map accompanying the description should be amended specifically on the northern areas to accurately reflect the text description. (3)

RESPONSE: The Department has made the suggested change of the word “west” to “northwest” upon adoption to more accurately describe the coastal center delineation. This more precise modifier does not change the placement of the lines or the shape of the coastal center. The expansion of the coastal center by measuring 1600 feet rather than 1500 feet from County Route 657 would place this coastal center boundary in close proximity to the Pennsylvania Reading Seashore Railroad right of way. The Department agrees that this readily identifiable feature is an appropriate coastal center boundary and has proposed to make this change in the concurrent proposal published in this Register. The maps are for illustrative purposes and the text of the rule will govern. While the Department did not receive the map that the commenter indicated was attached to his letter, it acknowledges the third point as a reference to the Crest Haven municipal complex, which is proposed for inclusion in the concurrent proposal in this Register.

552. COMMENT: The description of the Del Haven coastal center boundary should be revised so that the modifiers more precisely reflect the direction the boundary lines follow. For instance, “south on 7th Street to a point 400 feet south of Roosevelt Boulevard” should read “southwest on 7th Street to a point 400 feet southwest of Roosevelt Boulevard.” The commenter noted each such modifier that needed correction in the description of the Del Haven coastal center. The commenter also noted an error in the description of the coastal center. Specifically, the delineation should read “..to a point that is a perpendicular distance of 200 feet north of Eldredge Avenue, thence west for a distance of 2,000 feet along a line that is parallel to and 200 feet north of Eldredge Avenue...” rather than “..to a point that is a perpendicular distance of 100 feet north of Eldredge Avenue, thence west for a distance of 2,000 feet along a line that is parallel to and 200 feet north of Eldredge Avenue...” 100 feet north. (3)

RESPONSE: The Department has made the suggested changes on adoption (see Appendix 2) so that the modifiers in the description of the Del Haven coastal center boundary more precisely reflect the directions that the lines follow. The Department has also modified the distance upon adoption from 100 feet to 200 feet in accordance with the commenter’s suggestion in order for the coastal center description to be internally consistent. The more precise modifiers do not change the placement of the lines or the shape of the coastal center.

553. COMMENT: The description of the Green Creek coastal hamlet boundary should be revised as follows (boldface denotes insertion **thus**, brackets denote deletion [thus]):

“The coastal hamlet boundary extends from the intersection of Linda Lane and Paula Lane, thence [east] **northeast** on Paula Lane to a point that is a perpendicular distance of [600] **750** feet east of State Route 47, thence [north] **northwest** along a line that is parallel to and 600 feet east of State Route 47 to Burleigh Road, thence [west] **northwest** on Burleigh Road to a

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point that is a perpendicular distance of [400] **500** feet east of State Route 47, thence north along a line that is parallel to and [400] **500** feet east of State Route 47 to Lomurno Lane, thence west on Lomurno Lane to a point that is a perpendicular distance of [400] **500** feet west of State Route 47, thence south along a line that is parallel to and [400] **500** feet west of State Route 47 to Linda Lane, and thence south on Linda Lane to Paula Lane. (3)

RESPONSE: The Department does not agree with the recommendations for inclusion of additional areas within the coastal center. In delineating this coastal center boundary and recognizing existing infrastructure and development, the Department included what it believes are sufficient areas for imminent planned growth. The Department expects that municipalities will continue to examine the delineations in relation to their own planning efforts and development and redevelopment issues, and in many cases seek a different community development boundary and formal center designation by the State Planning Commission. This is a cooperative process in which the Department plays an active role.

However, the Department has made the suggested changes in direction on adoption (see Appendix 2) so that the modifiers in the description of the Green Creek coastal center boundary more precisely reflect the directions that the lines follow. The more precise modifiers do not change the placement of the lines or the shape of the coastal center.

554. COMMENT: The Rio Grande coastal center does not include industrial and commercial development on Indian Trail, including the Home Depot which was approved under CAFRA, even though this area has existing sewer and other necessary infrastructure. (57)

RESPONSE: It is not clear from the comment which developed areas the commenter believes should be included in the Rio Grande Coastal center. In regard to the specific site, the Department has verified that the Home Depot site is included in the Whitesboro/Burleigh coastal center, and believes that the Rio Grande coastal center boundary is appropriately inclusive of other industrial and commercial development.

555. COMMENT: The description of the Rio Grande coastal center boundary should be revised so that the modifiers more precisely reflect the direction the boundary lines follow. For instance, “east on Rio Grande Avenue to 6th Street” should read “southeast on Rio Grande Avenue to 6th Street.” The commenter noted each such modifier that needed correction in the description of the Rio Grande coastal center. (3)

RESPONSE: The Department has made the suggested changes on adoption (see Appendix 2) so that the modifiers in the description of the Rio Grande coastal center boundary more precisely reflect the directions that the lines follow. The more precise modifiers do not change the placement of the lines or the shape of the coastal center.

556. COMMENT: The description of the Swainton coastal center boundary should be revised so that the modifiers more precisely reflect the direction the boundary lines follow. For instance, “north on the Garden State Parkway to a point that is 1,000 feet north of Avalon Boulevard” should read “northeast on the Garden State Parkway to a point that is 1,000 feet north of Avalon

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Boulevard.” The commenter noted each such modifier that needed correction in the description of the Swainton coastal center. (3)

RESPONSE: The Department has made the suggested changes on adoption (see Appendix 2) so that the modifiers in the description of the Swainton coastal center boundary more precisely reflect the directions that the lines follow. The more precise modifiers do not change the placement of the lines or the shape of the coastal center.

557. COMMENT: The description of the Whitesboro/Burleigh coastal center boundary should be revised so that the modifiers more precisely reflect the direction the boundary lines follow. For instance, “a perpendicular distance of 1,000 feet east of US route 9” should read “a perpendicular distance of 1,000 feet southeast of US route 9.” The commenter noted each such modifier that needed correction in the description of the Whitesboro/Burleigh coastal center. (3)

RESPONSE: The Department has made the suggested changes on adoption (see Appendix 2) so that the modifiers in the description of the Whitesboro/Burleigh coastal center boundary more precisely reflect the directions that the lines follow. The more precise modifiers do not change the placement of the lines or the shape of the coastal center.

558. COMMENT: The verbal description of all coastal center boundaries should be carefully scrutinized and amended to explicitly include those small developed residential areas accessed by bridges. (14)

RESPONSE: It is not clear from the comment which areas the commenter believes should not be included in the coastal centers. The Department believes that the coordinated, cooperative State Planning Commission center designation process is the most effective planning strategy for determining center boundaries for additional areas.

559. COMMENT: There are two coastal centers with minor boundary inconsistencies in relationship to the Pinelands Comprehensive Management Plan designations. These centers are located where the Garden State Parkway crosses the Mullica River near Port Republic City and along Route 9 near Conoverstown in Atlantic County. Resolution of these inconsistencies may require changes in the boundaries of the Pinelands Land Capability Map and/or the State Plan Map. Without such resolution, the Pinelands Comprehensive Management Plan and the Coastal Zone Management rules will continue to be inconsistent. (53)

RESPONSE: The minor inconsistencies related to the boundaries of these two coastal centers arise from inconsistencies between Pinelands Management Areas and the State Plan’s Planning Areas, on which the Department’s Coastal Planning Areas are based. As explained in the response to comment 394 above, the Department believes that the best means of resolving inconsistencies between the Pinelands Management Areas and the State Plan’s Planning Areas are the correlation activities outlined in the 1999 memorandum of agreement between the Pinelands Commission and the State Planning Commission. Any changes to the Planning Area

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boundaries by the State Planning Commission as a result of the correlation will be addressed by the Department in accordance with N.J.A.C. 7:7E-5B.2.

560. COMMENT: There is major inconsistency between the Pinelands Comprehensive Management Plan designation and the center located west of Route 9 near the Oyster Creek Generating Station in Ocean County. Resolution of this inconsistency may require changes in the boundaries of the Pinelands Land Capability Map and/or the State Plan Map. Without such resolution, the Pinelands Comprehensive Management Plan and the Coastal Zone Management rules will continue to be inconsistent. (53)

RESPONSE: The Department has reviewed the area in question and is proposing to remove the undeveloped portions of the site from the Lacey Township coastal center in the concurrent proposal of amendments to the Coastal Zone Management rules. The Department has determined that this area does not fit the criteria for inclusion in a coastal center. The coastal center boundaries were drawn based on the Department's outreach efforts, and were based on existing, compact, mixed-use development. The Department included additional areas to accommodate growth when there was evidence of imminent development, such as existing infrastructure. The area proposed for removal contains environmentally sensitive features, is undeveloped, and does not contain infrastructure. For these reasons, the Department proposes amendments to the Lacey coastal town boundary in the concurrent rule proposal in this Register.

561. COMMENT: The commenter supports the Toms River Coastal regional center boundary. (17)

RESPONSE: The Department acknowledges this comment in support of the rule.

562. COMMENT: The commenter supports the revised barrier island coastal center boundaries, which now include the entire barrier island municipality. (105)

563. COMMENT: The Borough of Avalon supports its coastal center boundary. (58)

564. COMMENT: The Department should be commended for revising its procedures and meeting with the mainland municipalities to establish the boundaries of the coastal centers (104)

565. COMMENT: Salem County Planning Department supports the coastal center boundaries for Salem County municipalities as proposed, with the exception of Mannington Township. (96)

RESPONSE TO COMMENTS 562 THROUGH 565 The Department acknowledges these comments in support of the rule. The response to comment 536 discusses the coastal center delineation for Mannington Township.

566. COMMENT: The generalized land use map accompanying the rule proposal appears to indicate that a portion of the "H-tract" is not located within a Coastal Metropolitan Planning Area. Clarification of the map designation for this area is required. (37)

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567. COMMENT: The map accompanying the rule proposal appears to improperly indicate that the Huron North Redevelopment Area located in the Marina District of Atlantic City is designated as a Coastal Environmentally Sensitive Planning Area. The site is an old landfill and thus not environmentally sensitive. Additionally, the entire City is designated as a CAFRA urban center. In order to avoid confusion and for clarification purposes, this site should be designated on the map as a CAFRA urban center together with the balance of Atlantic City. (77)

RESPONSE TO COMMENTS 566 AND 567: Although the county map the Department released to show the overall relationship of CAFRA centers, coastal centers and Coastal Planning Areas indicates that the underlying Coastal Planning Areas for Atlantic City are Metropolitan and Environmentally Sensitive, Atlantic City is entirely a CAFRA urban center, as indicated by the red outline on the map. Therefore, the “H tract” is within a CAFRA urban center which supersedes the Coastal Planning Area designation. The county maps were prepared for public information only, and the text of the rule governs the center boundaries.

568. COMMENT: The coastal centers are rather narrowly defined; they are for the most part drawn around existing development with little or no undeveloped land included within the boundaries of the centers. This is contrary to the center concept used by the Office of State Planning, which provides for expansion outward from designated centers and inclusion of vacant developable land within the boundaries of the center. Given the very narrowly drawn coastal centers, there is a concern that rather than being the plan for the coastal zone, the proposed rules are a means of preserving the status quo. The coastal centers should be examined further and boundaries expanded to include some logical development outward from the centers. (79)

569. COMMENT: The Department’s coastal center designations are suspect. The Department asserts that the center boundaries have been drawn to reflect existing development, however the delineations are woefully under inclusive. There is no indication that the coastal centers as drawn have the ability to accommodate any new growth which would result in unreasonably high densities in the developed centers which local officials will probably find unacceptable. In addition, the proposal gives municipalities the ability to apply more stringent coverage limits, thus potentially eliminating any development opportunities that may exist. If growth cannot be accommodated in the coastal centers (and certainly cannot be accommodated in the Coastal Rural and Coastal Environmentally Sensitive Planning Areas), where can the growth occur? The answer appears to be that this is a no growth plan. (57)

570. COMMENT: The proposal states that growth will be accommodated in a concentrated pattern but there is no allowance made in the proposal for this type of development. There are only seven CAFRA centers, no CAFRA cores or CAFRA nodes and according to the summary the proposed coastal center boundaries were drawn around existing and in some cases imminent development. Thus, the Department has not left any room to concentrate development. The proposal must be clear in how it will accommodate growth so that the economy of the region will not be impaired. There must be an analysis of future growth and then a subsequent determination of how this growth will be accommodated. This information should be the basis

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for the proposal. (30)

RESPONSE TO COMMENTS 568 THROUGH 570: The coastal centers were delineated to reflect areas where development and infrastructure currently exist, as well as adjacent areas where additional growth can be accommodated, and were based on significant municipal input. The rule is not a “no growth” plan, but a plan to steer development towards the most appropriate areas and to reduce uncontrollable sprawl. Municipalities can work with the Office of State Planning to make changes in planning area boundaries and centers. The Department will review these changes, if approved by the State Planning Commission, and incorporate them if consistent with the Coastal Zone Management rules and CAFRA.

571. COMMENT: Representatives of Galloway Township have not been involved in the establishment of the coastal center boundary. This is evidenced through the proposed coastal center boundary for the Township, which does not: (1) incorporate the Township’s Conservation Zone; (2) protect environmentally sensitive areas; and (3) identify the appropriate growth areas. The Department has not created a provision for modifying these boundaries after the rule adoption. (106)

RESPONSE: Through the CAFRA Planning Map, the Department has established Coastal Planning Areas and centers based on the State Development and Redevelopment Plan’s Resource Planning and Management Map. These planning areas were based on specific delineation criteria, including the presence, or absence of growth-accommodating infrastructure, or sensitive natural features, and after a significant public process. The Department believes that the Coastal Planning Areas in Galloway Township accurately reflect conditions in the region, but acknowledges that the Township is currently negotiating planning area changes with the State Planning Commission. As a member of the Commission, the Department will participate in these negotiations and consider the accuracy of the delineations based on any supporting documentation that the Township may supply. The Department also conducted an extensive outreach effort to coastal counties and municipalities throughout the CAFRA area before publishing the rule proposal, including meetings with Galloway Township officials. The rule provides that the Department will incorporate changes that are approved by the State Planning Commission and found by the Department to be consistent with the Coastal Zone Management rules and CAFRA.

Comments Beyond the Scope of the Proposal

The following is a list of comments that were beyond the scope of the August 2, 1999 rule proposal. The Department could not adopt these suggested changes without first proposing them for public comment. The Department will evaluate these comments in determining what changes to the rules might be appropriate for proposal in the future.

572. COMMENT: Defining aquaculture as a water-dependent use in the Coastal Zone Management rules is critically important to existing and proposed operations as proximity and direct access to water sources is essential for cost effective water supply access and access to

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vessels for transport and transfer of culture media or product. We commend the Department's Bureau of Water Allocation, which has already incorporated aquaculture water usage into their agriculture water certification/registration process. (16)

573. COMMENT: The current regulations (N.J.A.C. 7:7E-3.31) indicate that "all steep slopes associated with shoreline processes, or adjacent to the shoreline, or contributing sediment to the system will be considered coastal bluffs." This definition is imprecise and needs to be clarified. The current Department interpretation of this can lead to classifying interior steep slope areas as coastal bluffs. (26)

574. COMMENT: The regulatory climate which requires a CAFRA permit for many commercial companies adding a parking space and industries constructing building additions, adds an element of uncertainty to business decisions. The timeframe for obtaining a CAFRA permit is unpredictable. Time is money to business, and the biggest problem with the regulatory process is the length of time it takes to obtain a permit. (109)

575. COMMENT: The existing regulation on tower orientation should be modified. The High Rise Structures rule, N.J.A.C. 7:7E -7.14 requires that structures more than six stories or 60 feet high are required to have their longest lateral dimension oriented perpendicular to the beach or coastal waters. This rule does not allow flexibility to design a project that satisfies the underlying environmental policy in a manner other than that dictated by the design criteria set forth in the regulation. (100)

576. COMMENT: The goal of CAFRA requires that the Department consider insurance and other similar issues that impact homes and businesses in these coastal communities. As such, the Department should seek input from the Department of Community Affairs. Building codes have a significant impact on mitigating damage from natural disasters. (107)

577. COMMENT: The impact of life threatening storms warrants strong consideration by the Department of construction standards and should be a principal issue addressed by CAFRA. Given the increased development in the coastal region and recent changes in weather patterns, these issues become more paramount as the hazards associated with hurricanes, tornadoes, and other similar storms affect substantially larger portions of the state's residents than in the past. (107)

578. COMMENT: This proposed regulation should provide important advice and guidance for homeowners and businesses in the construction of residential, retail and business projects. (107)

579. COMMENT: The commenters continue to register their concern about how useful any regulations in the coastal region are in light of the existence of the 24-unit, 49 parking space loophole that allows coastal development without regulation. The loophole should be closed. (10, 31, 44, 52, 87, 91, 95)

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580. COMMENT: The format of the hearings on rule proposals should be changed to allow the public with divergent viewpoints to talk with each other. (87)

581. COMMENT: The confusion surrounding the overlap of CAFRA and the Pinelands is the result of special interests whether they be the Legislators or County officials. As a result of these special interests, the Pinelands has been divided into two separate areas, the federal and state and on top of that there is CAFRA. (87)

582. COMMENT: The State Development and Redevelopment Plan does not have any clear standards for protecting the environment. (87)

583. COMMENT: The Department will not allow sewers to be constructed in the North End of Sea Isle City. The Federal Emergency Management Agency will not give the property owners in this area a discount on their flood insurance since the houses are served by septic systems. How does the Department that calls itself Environmental Protection allow septic systems on barrier islands? The Department requires septic systems to be cleaned too often. The refusal to include Sea Isle City in the Cape May Water Quality Management Plan is contrary to local planning. (59)

584. COMMENT: The CAFRA regulations do not go far enough to include public access to areas that are being developed, particularly areas that have been already associated with and used by the public, and public access should be considered before any permits are granted. (24)

585. COMMENT: Consideration should be given to regulating all developments, especially along the coast and regardless of size of the development area, based on their impact to public access. (24)

586. COMMENT: Nothing should inhibit the ability of a municipality to amend its Water Quality Management Plan or Facilities Plan such that a proposed development can be within a sewer service area. (85)

587. COMMENT: The review of the Cape May County Water Quality Management Plan is not being coordinated with these regulations (67)

588. COMMENT: CAFRA does not adequately address the cumulative effect of development. (43)

589. COMMENT: Further legislation is needed to force the Department to develop regulations which will adequately protect the resources of the CAFRA area. (87)

590. COMMENT: The commenter supports Senator Gormley's bill S1007 requesting that planning projects be funded for each project to accomplish planning from the bottom up. (92)

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591. COMMENT: Citizens should be able to walk along any waterway without touching private property. These rights must be elucidated and zoning used to achieve it. (61)

592. COMMENT: The State should continue the voluntary acquisition program which resulted in preservation of lands in Cape May County along Delaware Bay. (102)

593. COMMENT: The Cape May Planning Board still has a disagreement after cross-acceptance with the State Planning Commission and the Resource Planning and Management Map but will be working with the Office of State Planning to resolve these differences. (14)

Summary of Agency-Initiated Changes

1. **N.J.A.C. 7:7-1.10(e)4:** An addition was made to this provision requiring that the letter offering a property for sale, which is required with a request for relaxation of the Coastal Zone Management rules, be provided by the Department. This requirement will ensure that all such letters will be consistent and provide the information necessary for a recipient of the letter to decide whether to make an offer on the property and thus enable the Department to use responses to the letter when evaluating the request for relaxation of the Coastal Zone Management rules.
2. **N.J.A.C. 7:7-9.4(b)7iv:** “Include” was added to this provision for grammatical consistency.
3. **N.J.A.C. 7:7E-5.2:** “Node” was added to the definition of CAFRA node and “boundary” was added to the definition of “Coastal center” for grammatical sense. In addition, the definition of “State Plan” was deleted because the term is not used in subchapters 5, 5A, or 5B.
4. **N.J.A.C. 7:7E-5.4(b)1:** The cross- reference in this section was corrected from N.J.A.C. 7:7E-5B.5 to 5B.4.
5. **N.J.A.C. 7:7E-5B.3(a)3:** Reference to the Coastal Metropolitan Planning Area was added to the list of locations in this section for consistency with the preceding paragraph at (a)2 and to clarify that the impervious cover limit for the underlying Coastal Planning Area applies if a site is located outside of any CAFRA or coastal center as well as outside the Coastal Metropolitan Planning Area.
6. **N.J.A.C. 7:7E-5B.4(a)1iii:** “Forested” was added in two places to clarify that for each forested site or forested portion of a site, the tree preservation and/or tree planting requirement is calculated by multiplying the acreage of the net land area on the forested site or forested portion by the tree preservation percentage in Table I for the site location that applies to the site or portion.
7. **Appendix 2 and Appendix 3:** Clarifying changes were made to the titles and opening paragraphs to these appendices to better reflect their contents.

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8. Appendix 2, Cape May County, Middle Township coastal centers, Del Haven coastal village: To further refine the direction in which to measure the 200 foot distance northwest of Bayshore Road (County route 60), the phrase “that is a perpendicular distance of” was added to the coastal center boundary description to make the description more precise.

9. Appendix 2, Cape May County, Middle Township coastal centers, Green Creek coastal hamlet: The phrase “State route 47, thence west along the same bearing to” has been added to the coastal center boundary description. The proposed description used Lomurno Lane west of State route 47 as a boundary. However, Lomurno Lane does not exist west of State route 47. Therefore, the boundary description was changed to replace the reference to Lomurno Lane west of State route 47 with a line drawn perpendicular to State route 47 at the intersection of State route 47 and Lomurno Lane.

Federal Standards Analysis

Executive Order No. 27(1994) and P.L. 1995, c.65 (amending N.J.A.C. 52:14B-1 et seq.) require that State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

The Federal Coastal Zone Management Act (P.L. 92-583) was signed into law on October 27, 1972. The Act does not set specific regulatory standards for development in the coastal zone: rather, it provides broad guidelines for states developing coastal management programs. These guidelines are found at 15 C.F.R. Part 923. The guidelines do not specifically address impervious cover limits or vegetative cover requirements, address the requirements of the Atlantic City rule adopted herein, as they relate to development and redevelopment of Atlantic City, nor do they contain a Sector Permit, or any other prescribed methodology to coordinate state and local review of development projects. They simply provide a planning and management process, without establishing development standards for construction in the coastal area. Therefore, the Department has concluded that these new rules and amendments do not exceed any standards of the Federal Coastal Zone Management Act.

The National Flood Insurance Program (NFIP) establishes standards for flood damage prevention ordinances that must be adopted by a municipality as a conditions of participating in the NFIP. One provision of the ordinance is to prohibit the construction of residential development, including hotels, over the water. The new Atlantic City rule will permit the construction of hotels on existing ocean piers over the water if a waiver is granted by the Federal Emergency Management Agency (FEMA). Thus, the rule does not exceed Federal standards.

For the reasons discussed above, the Department has concluded that these new rules and amendments do not exceed any Federal standards or requirements.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*);

7:7-1.10 Construction and relaxation of procedures or standards

(a) –(b) (No change from proposal.)

(c) In making any permit decision under this chapter, the Department may relax the application of one or more of the substantive standards in the rules on Coastal Zone Management at N.J.A.C. 7:7E. The Department may relax the application of the standards in N.J.A.C. 7:7E only if the applicant demonstrates that an extraordinary hardship exists. An extraordinary hardship is deemed to exist only if the applicant demonstrates to the Department's satisfaction that:

1. The strict application of any standard(s) in N.J.A.C. 7:7E would prevent a property owner from realizing a minimum beneficial use of his or her property as a whole, in accordance with constitutional standards, and this does not result from an action or inaction of that property owner *or an entity controlled by that property owner*. For the purposes of this paragraph, the property as a whole is all property that was assembled as one investment or to further one development plan, and may include more than one municipal tax lot. The property as a whole may also include lots that were previously sold or developed, if those lots were part of one investment or one development plan;

2. – 7. (No change from proposal.)

(d) (No change from proposal.)

(e) A request for the relaxation of N.J.A.C. 7:7E standards under (c) above shall include the following:

1. – 3. (No change from proposal.)

4. Documentation that the property has been offered for sale, in *[writing,]* *a letter provided by the Department,* via certified mail, at a fair market value, to all owners of property within 200 feet of the property, and to the land conservancies *[and]**,* environmental organizations *, and governmental agencies* on a list supplied by the Department^{*}[, and that no reasonable offer to purchase the property has been received]*. *The applicant shall submit any response it receives to the offer for sale to the Department within the timeframe specified at (e)4i below.*
The written offer of sale shall:

i. – iv. (No change from proposal.)

5. (No change from proposal.)

SUBCHAPTER 9. SECTOR PERMIT

7:7-9.3 Sector Permit standards

Note: This is a courtesy copy and is not the official version of this rule adoption. The official, legally effective version of this adoption is set forth in the February 7, 2000, issue of the *New Jersey Register*. Should there be any discrepancies between this text and the official version of the adoption, the official version will govern.

(a) The construction of CAFRA-regulated development shall be authorized under the Sector Permit if the following requirements are met:

1. – 2. (No change from proposal.)

3. Construction, including site preparation, of a development authorized under the Sector Permit shall not be started until either 45 days after receipt by the Department of the final planning board approval under N.J.A.C. 7:7-9.7(a)3 below or 90 days after receipt by the Department of notice under N.J.A.C. 7:7-9.7(b)1 below, whichever is applicable, unless prior to that time the Department publishes a notice in the DEP Bulletin pursuant to N.J.A.C. 7:7-9.8*[(a)]* that the Sector Permit is applicable to the development*[,] * *, in which case, construction may be started on or after the date of publication of such notice.*

(b) (No change from proposal.)

7:7-9.4 Requirements for certification as a sector permit municipality

(a) (No change from proposal.)

(b) A request for certification as a Sector Permit municipality shall include the following:

1. – 6. (No change from proposal.)

7. A report describing how the municipality's ordinances ensure that any development approved by the municipality in accordance with the ordinances and throughout all portions of the municipality that are within the CAFRA area will be consistent with the Coastal Zone Management rules, N.J.A.C. 7:7E. The ordinances shall include a mechanism for identifying Special Areas as well as specific standards for regulating development in these areas. The report shall:

i. - ii. (No change from proposal.)

iii. Include a copy of the letter of interpretation issued in accordance with the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, for the sector, either verifying freshwater wetlands and associated transition area lines or confirming the absence of freshwater wetlands and transition areas within the sector; *and*

*[iv. Include a letter from the Non Game and Endangered Species Program of the Department's Division of Fish, Game and Wildlife finding that the municipality's ordinances adequately protect Endangered or Threatened Wildlife Species Habitat as defined at N.J.A.C. 7:7E-3.38 within the sector;

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v. Include a letter from the Department's Natural Lands Management Program finding that the municipality's ordinances adequately protect Endangered or Threatened Vegetation Species Habitat as defined at N.J.A.C. 7:7E-3.38 within the sector;

vi. Include a letter from the Department's Historic Preservation Office finding that the municipality's ordinances adequately protect Historic and Archaeological Resources as defined at N.J.A.C. 7:7E-3.36 within the sector; and

vii.]* iv.* If the portion of the municipality in the CAFRA area is also in the Pinelands National Reserve, include*a letter from the Pinelands Commission finding the municipality's ordinances acceptable as to development within the Pinelands National Reserve.

(c) – (j) (No change from proposal.)

7:7E-3.21 Bay islands

(a) (No change from proposal.)

(b) On bay islands which abut either a paved public road or a conveyance component of an offsite treatment, conveyance and disposal system with adequate capacity to convey, treat and dispose of the sewage generated from the proposed development, or which abut neither a paved public road nor such a conveyance, non-water dependent development is prohibited *unless it meets the standards of (d) below* and water dependent development is discouraged. Water dependent development is conditionally acceptable provided that:

1. – 3. (No change from proposal.)

(c) – (d) (No change from proposal.)

7:7E-3.49 Atlantic City

(a) (No change from proposal.)

(b) "Casino hotels" are hotels with casinos as provided for in the Casino Control Act (P.L. 1977, c.100, as amended).

1. Casino hotel development in Atlantic City shall be located in the city's traditional resort area (along the Boardwalk), and in the State Marina area to the maximum extent practicable. *For the purpose of this rule, the State Marina area is the area bounded by Clam Creek, Absecon Inlet, Clam Thorofare, Penrose Canal, Absecon Boulevard, Huron Avenue, and Maryland Avenue to Magellan Avenue, across Delta Basin.*

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i. (No change from proposal.)

ii. Casino hotel development is discouraged along the access highways to Atlantic City *that is, along the entire Atlantic City Expressway, Route 40 north and west of Beach Thorofare and Route 30 northwest of Penrose Canal*.

iii. (No change from proposal.)

(c) The following standards apply to all development proposed on or over the existing ocean piers listed at (c)1 below.

1. Existing ocean piers (piers) are limited to the footprint of the following five piers, as depicted on the Department's 1995-1997 National Aerial Photographic Program imagery (GIS):

i. Garden Pier;

ii. Steel Pier;

iii. Steeplechase Pier *, except that Steeplechase Pier may be connected to the Boardwalk provided the connecting portion of the pier does not exceed the width of the existing Steeplechase Pier*;

iv. Central Pier; and

v. Million Dollar Pier (Ocean One).

2. Residential development is prohibited on the existing ocean piers except *[for hotels that have received approval from]* *where a waiver of strict compliance with the municipal flood damage prevention ordinance has been granted by* the Federal Emergency Management Agency *for a hotel* to be located over the water.

3. – 7. (No change from proposal.)

8. Public access shall be provided in accordance with all of the following:

i. The development shall provide a means for pedestrians to walk along the dry beach under the pier from one side to the other *, except where the beach is so narrow as to preclude such passage*;

ii. A stairway shall be provided from the pier to the beach and from the Boardwalk to the beach *[on each side]* *on the southwesterly side of the pier,* where the pier intersects the Boardwalk*[:]* *and, on the northeasterly side of the pier, either where the pier intersects the Boardwalk or on the Boardwalk within 50 feet of the point at which the pier intersects the Boardwalk*:

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iii. – vi. (No change from proposal.)

vii. Public restrooms, showers and changing areas shall be provided on the pier, *immediately* adjacent to the Boardwalk and the stairs from the beach on either side of the pier *. Alternatively, the public restrooms, showers and changing areas may be located immediately adjacent to the Boardwalk provided these facilities are:

(1) Owned and maintained by the pier owner; and

(2) Located no further than 200 linear feet from the pier*; and

viii. (No change from proposal.)

9. Service corridors to the piers shall be located beneath the Boardwalk, or if service to the piers is to be provided over the Boardwalk, it shall be restricted to the period between 12 o'clock midnight and *[6:00]* *8:00* A.M.

10. –11. (No change from proposal.)

(d) The construction of new commercial piers or expansion of existing commercial piers is prohibited, unless *the pier is* associated with a marina which meets the Resort Recreational Use rule, N.J.A.C. 7:7E-7.3, and the Marina Development Standards at N.J.A.C. 7:7E-7.3A *or meets the standards at N.J.A.C. 7:7E-3.49(c)*.

(e) The following standards apply to all development proposed in the Boardwalk right-of-way as defined at (e)1 below:

1. For the purposes of this subsection, Boardwalk right-of-way means the shore-parallel promenade located immediately adjacent to the ocean and inlet beach occupying a *[60 foot right-of-way from Oriental Avenue to Maine Avenue and a 40 foot right-of-way from Vermont Avenue to Oriental Avenue]* *20 foot right-of-way from Jackson Avenue to Roosevelt Place, a 40 foot right-of-way from Roosevelt Place to Bellevue Avenue, a 60 foot right-of-way from Bellevue Avenue to Rhode Island Avenue, a 40 foot right-of-way from Rhode Island Avenue to Atlantic Avenue, and a 20 foot right-of-way from Atlantic Avenue to Caspian Avenue* as shown on the 1999 Atlantic City tax duplicate.

2. – 5. (No change from proposal.)

(f) – (l) (No change from proposal.)

7:7E-5.2 Definitions

In addition to the terms defined at N.J.A.C. 7:7E-1.5, the following words and terms are defined

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for purposes of this subchapter and N.J.A.C. 7:7E-5A and 5B:

...

"CAFRA node" means a *node* with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.2.

...

"Coastal center" means a center in the CAFRA area with a *boundary* delineated by the Department for the purpose of applying the requirements for impervious cover and vegetative cover at N.J.A.C. 7:7E-5 and 5B until such time as, in accordance with N.J.A.C. 7:7E-5B.2, the coastal center expires or is superseded by the CAFRA center.

...

["State Plan" means the New Jersey State Development and Redevelopment Plan, adopted and/or readopted by the State Planning Commission pursuant to the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., and the State Planning Act rules, N.J.A.C. 17:32.]

...

7:7E-5.4 Vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas

(a) (No change from proposal.)

(b) If a site is located in the northern waterfront region or urban area region in the upland waterfront development area; or if a site is located in a CAFRA center, CAFRA core, or CAFRA node; or if the area of trees on a site required to be planted and/or preserved as calculated under (b)1 below is smaller than one acre, the vegetative requirements with respect to trees are as follows:

1. The area (in acres) of the site that shall be planted in trees and/or preserved in trees is calculated under N.J.A.C. 7:7E-5A.10 or *[5B.5]* *5B.4*; and

2. (No change from proposal.)

(c) - (g) (No change from proposal.)

7:7E-5B.3 Impervious cover limits for a site in the CAFRA area

(a) The impervious cover limit for a site in the CAFRA area shall be determined as follows:

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1. - 2. (No change from proposal.)

3. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in *the Coastal Metropolitan Planning Area or in* a coastal center, the impervious cover limit is determined under (e) below based on the Coastal Planning Area in which the site is located; and

4. (No change from proposal.)

(b) – (g) (No change from proposal.)

7:7E-5B.4 Vegetative cover percentages for a site in the CAFRA area

(a) The area (in acres) on a site in the CAFRA area in which trees and/or herb/shrub vegetation shall be planted or preserved is calculated as follows:

1. To determine the area (in acres) of tree preservation and/or tree planting on the site:

i. – ii. (No change from proposal.)

iii. For each forested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the *forested* site or *forested* portion, as determined under N.J.A.C. 7:7E-5.3(d), by the tree preservation percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and

iv. (No change from proposal.)

2. (No change from proposal.)

(b) – (c) (No change from proposal.)

7:7E-7.14 High-rise structures

(a) (No change from proposal.)

(b)The High-rise structures rule shall not apply to the following types of development:

1. Development in Atlantic City on existing ocean piers which meets the standards at N.J.A.C. 7:7E-3.49(c) *or pedestrian bridges which meet the standards at N.J.A.C. 7:7E-3.49(i)1*; or

2. (No change from proposal.)

(c) (No change from proposal.)

APPENDIX 2

BOUNDARIES OF COASTAL CENTERS IN THE CAFRA AREA NOT LOCATED ON BARRIER ISLANDS*,* *[AND ON]* OCEANFRONT SPITS *[AND]* *,OR* PENINSULAS

For purposes of N.J.A.C. 7:7E-5 and 5B, this appendix sets forth the boundaries of coastal centers in the CAFRA area other than those on the barrier islands*,* *[and]* oceanfront spits *[and]* *,or* peninsulas (the boundaries of which are set forth in Appendix 3).

In accordance with N.J.A.C. 7:7E-5.3(c), the impervious cover allowed on a site within a Department-delineated coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7E-5.3(d). The placement of impervious cover on a site in a coastal center may be further restricted by other provisions of this chapter, including the Special Area rules at N.J.A.C. 7:7E-3.

The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the coastal centers are listed alphabetically.

Maps of the coastal centers, for illustration only, may be reviewed at the Department, 401 East State Street, Trenton, New Jersey, (609) 292-1143. In case of any discrepancy between the maps and this text, this text shall govern. Note: When a point is described as being a certain distance from a particular street or railroad right-of-way, that distance is measured from the centerline of the right-of-way of such street or railroad.

I. Atlantic County coastal centers

(No change from proposal.)

II. Burlington County coastal centers

(No change from proposal.)

III. Cape May County coastal centers

A. – C. (No change from proposal.)

D. Middle Township coastal centers

1. Cape May Court House coastal regional center

- a. The coastal regional center boundary extends from the intersection of the Garden State Parkway and Crest Haven Road north on the Garden State

Parkway to a point 200 feet north of the intersection of the Garden State Parkway and Crest Haven Road, thence *[west]* *northwest* along a line perpendicular to the Garden State Parkway to the Connectiv Transmission Line, thence southwest along the Connectiv Transmission Line to County route 657 (Court House – South Dennis Road), thence west a perpendicular distance of 1500 feet, thence south along a line that is parallel to and 1500 feet west of County route 657 (Court House – South Dennis Road) to Magnolia Drive, thence southwest on Magnolia Drive to Church Street, thence west on Church Street to County route 615 (Goshen Road), thence north on Goshen Road to the Connectiv Transmission Line, thence southwest along the Connectiv Transmission Line to a point that is due west of the intersection of Pacific Avenue and Shunpike Road, thence east to the intersection of Pacific Avenue and Shunpike Road, thence east on Pacific Avenue to the railroad right of way, thence south along the railroad right of way to a point 2000 feet south of Oyster Road, thence due east to the Garden State Parkway, and thence northeast on the Garden State Parkway to First Avenue, thence east on First Avenue to a point that is a perpendicular distance of 2000 feet east of the Garden State Parkway, thence north along a line that is parallel to and 2000 feet east of the Garden State Parkway to a point that is a perpendicular distance of 500 feet north of Stone Harbor Boulevard, thence west along a line that is parallel to and 500 feet north of Stone Harbor Boulevard to the Garden State Parkway, and thence northeast on the Garden State Parkway to Crest Haven Road

2. Del Haven coastal village

- a. The coastal village boundary extends from the intersection of Delaware Avenue and Millman Boulevard, thence southwest on Delaware Avenue to Roosevelt Boulevard, thence southeast on Roosevelt Boulevard to 7th Street, thence *[south]* *southwest* on 7th Street to a point 400 feet *[south]* *southwest* of Roosevelt Boulevard, thence *[east]* *southeast* along a line parallel to and 400 feet *[south]* *southwest* of Roosevelt Boulevard to a point *that is a perpendicular distance of* 200 feet *[west]* *northwest* of Bayshore Road (County route 603), thence southwest along a line that is parallel to and 200 feet *[west]* *northwest* of Bayshore Road (County route 603) to a point that is a perpendicular distance of *[100]* *200* feet north of Eldredge Avenue, thence west for a distance of 2000 feet along a line that is parallel to and 200 feet north of Eldredge Avenue, thence due south to Eldredge Avenue, thence west on Eldredge Avenue to Delaware Avenue, thence south on Delaware Avenue to Sun Ray Beach Road, thence east on Sun Ray Beach Road to Oak Road, thence south on Oak Road to its end and then along the same bearing to a point 100 feet south of Rutledge Avenue, thence east along a line parallel to and 100 feet south of Rutledge Avenue to Bayshore

Road, thence northeast on Bayshore Road to Lafayette Avenue, thence southeast on Lafayette Avenue to 15th Street, thence northeast on 15th Street to Norburys Landing Road (County route 642), thence northwest on Norburys Landing Road (County route 642) to 16th Street, thence northeast on 16th Street to its end, then along the same bearing to a point 800 feet *[north]* *northeast* of Millman Boulevard, thence northwest along a line that is parallel to and 800 feet *[north]* *northeast* of Millman Boulevard to a point that is *[north]* *northeast* from the end of, and on the same bearing as, 7th Street, thence southwest along that bearing to 7th Street, thence southwest on 7th Street to Millman Boulevard, and thence northwest on Millman Boulevard to Delaware Avenue.

3. Goshen coastal hamlet (No change from proposal.)
4. Green Creek coastal hamlet
 - a. The coastal hamlet boundary extends from the intersection of Linda Lane and Paula Lane, thence *[east]* *northeast* on Paula Lane to a point that is a perpendicular distance of 600 feet east of State route 47, thence *[north]* *northwest* along a line that is parallel to and 600 feet east of State route 47 to Burleigh Road, thence *[west]* *northwest* on Burleigh Road to a point that is a perpendicular distance of 400 feet east of State route 47, thence north along a line that is parallel to and 400 feet east of State route 47 to Lomurno Lane, thence west on Lomurno Lane to *State route 47, thence west along the same bearing to* a point that is a perpendicular distance of 400 feet west of State route 47, thence south along a line that is parallel to and 400 feet west of State route 47 to Linda Lane, and thence south on Linda Lane to Paula Lane.
5. Rio Grande coastal regional center
 - a. The coastal regional center boundary extends from the intersection of Rio Grande Avenue and US route 9, thence *[east]* *southeast* on Rio Grande Avenue to 6th Street, thence north on 6th Street to State route 47, thence *[east]* *southeast* on State route 47 to the Garden State Parkway, thence *[north]* *northeast* on the Garden State Parkway to a point that is east of, and on the same bearing as, the southernmost west-east road in the Marlyn Manor Trailer Park (Maurice Street), thence *[west]* *northwest* to Maurice Street, thence *[west]* *northwest* on Maurice Street to its end, thence *[west]* *northwest* along the same bearing to US route 9, thence *[north]* *northeast* on US route 9 to a point that is east of, and on the same bearing as, Satt Road, thence west to Satt Road, thence *[west]* *northwest* on Satt Road to Railroad Avenue, thence *[south]* *southwest* on Railroad Avenue to Davis Road, thence *[west]* *northwest* on Davis Road to Shunpike Road, thence southwest on Shunpike Road to State route 47, thence *[east]*

southeast on State route 47 to US route 9, and thence *[south]* *southwest* on US route 9 to Rio Grande Avenue.

6. Swainton coastal hamlet

- a. The coastal hamlet boundary extends from a point on Faith Run Road that is 500 feet west of US route 9, thence east on Faith Run Road to US route 9, thence east on the same bearing to a point that is 500 feet east of US route 9, thence northeast along a line that is parallel to and 500 feet east of US route 9 to a point 1000 feet south of Avalon Boulevard, thence east along a line that is parallel to and 1000 feet south of Avalon Boulevard to the Garden State Parkway, thence *[north]* *northeast* on the Garden State Parkway to a point that is 1000 feet north of Avalon Boulevard, thence *[west]* *northwest* along a line that is parallel to and 1000 feet north of Avalon Boulevard to the intersection of Brookridge Road and US route 9, thence *[west]* *northwest* on Brookridge Road to a point 500 feet west of US route 9, and thence southwest along a line that is parallel to and 500 feet west of US route 9 to Faith Run Road.

7. Whitesboro / Burleigh coastal village

- a. The coastal village boundary extends from the intersection of US route 9 and Kings Avenue, thence a perpendicular distance of 1000 feet *[east]* *southeast* of US route 9, thence *[north]* *northeast* along a line that is parallel to and 1000 feet *[east]* *southeast* of US route 9 to Lena Street, thence east on Lena Street to its end, and continuing on the same bearing to the Garden State Parkway, thence north on the Garden State Parkway to Wildwood Boulevard, thence west on Wildwood Boulevard to US route 9, thence *[north]* *northeast* on US route 9 for 500 feet, thence northwest along a line that is parallel to and 500 feet north of Indian Trail (County route 618) to the Connectiv transmission line, thence *[south]* *southwest* along the Connectiv transmission line to a point that is northwest from the end of, and on the same bearing as, Kings Avenue, thence southeast along that bearing to Kings Avenue, and thence southeast on Kings Avenue to US route 9.

E. Upper Township coastal centers
(No change from proposal.)

F. West Cape May Coastal town
(No change from proposal.)

IV. Cumberland County coastal centers
(No change from proposal.)

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V. Ocean County coastal centers
(No change from proposal.)

VI. Salem County coastal centers
(No change from proposal.)

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APPENDIX 3

BOUNDARIES OF COASTAL CENTERS IN THE CAFRA AREA LOCATED ON BARRIER ISLANDS, *[AND ON]* OCEANFRONT SPITS *[AND]* *,or* PENINSULAS

For purposes of N.J.A.C. 7:7E-5 and 5B, this appendix sets forth the boundaries of coastal centers in the CAFRA area on barrier islands, *[and on]* oceanfront spits *[and]* *,or* peninsulas. The boundaries of all other coastal centers are set forth in Appendix 2.

In accordance with N.J.A.C. 7:7E-5.3(c), the impervious cover allowed on a site within a Department-delineated coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7E-5.3(d). The placement of impervious cover on a site in a coastal center may be further restricted by other provisions of this chapter, including the Special Area rules at N.J.A.C. 7:7E-3.

The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the coastal centers are listed alphabetically.

(No change from proposal)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994) (see p. *), permit the public to understand accurately and plainly the purposes and expected consequences of these amendments and new rules. I hereby authorize the adoption of these amendments and new rules.

DATE

ROBERT C. SHINN, JR. COMMISSIONER
Department of Environmental Protection